

Present: Ms. Kirti Sejwal, Advocate for the plaintiff.
Ms. Neha Sirohi, Government Pleader for the defendant No. 1.
Shri Rishi Raj Yadav, Advocate for the applicant/defendant No. 2.

This order pertains to an application filed by Defendant No. 2 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC), seeking dismissal/rejection of the plaintiff's suit on the grounds of lack of cause of action and non-payment of requisite ad valorem court fee. In the alternative, Defendant No. 2 prays that the plaintiff be directed to pay the ad valorem court fee on the entire amount claimed as recovery, failing which the suit be dismissed.

2. The contentions of Defendant No. 2, as set out in the application, are summarized as follows:

a. The plaintiff has not approached the Court with clean hands, has concealed material facts, and has provided false information in the plaint.

b. No cause of action arose on the dates mentioned in the plaint (18.05.2009, 11.01.2010, 29.03.2017, 17.11.2017, 18.04.2019, and 24.09.2019) to justify the filing of the suit.

c. The plaintiff was acquitted in a criminal case under Sections 498A, 406, and 506 of the Indian Penal Code (IPC) arising from FIR No. 72 dated 18.05.2009, filed by Defendant No. 2, as the prosecution failed to prove the case beyond reasonable doubt. A Criminal Revision (CRR No. 729/2018) is pending against the plaintiff before the Hon'ble High Court of Punjab and Haryana.

d. The plaintiff's suit is false, concocted, and lacks a cause of action.

e. The plaintiff has not paid the ad valorem court fee on the entire recovery amount claimed, as required under the Court Fees Act, rendering the suit liable to be dismissed under Order VII Rule 11 CPC.

3. The plaintiff has opposed the application, submitting that the suit is filed for damages on account of malicious prosecution. The plaintiff contends that the court fee will be paid as per the value of any decree awarded by the Court, should damages be granted.

4. Upon perusal of the application, the plaintiff's reply, and the material on record, this Court proceeds to adjudicate the application under Order VII Rule 11 CPC, which provides for the rejection of a plaint on specific grounds, including lack of cause of action and non-payment of requisite court fee.

On the Ground of Lack of Cause of Action

5. The learned counsel for Defendant No. 2 contends that the plaintiff's suit lacks a cause of action, alleging that the plaint is based on false and concocted facts. The plaintiff's suit is for damages arising out of alleged malicious prosecution, stemming from the criminal case initiated by Defendant No. 2 (FIR No. 72 dated 18.05.2009 under Sections 498A, 406, and 506 IPC). The plaintiff was acquitted in the said criminal case, and a revision petition (CRR No. 729/2018) is pending before the Hon'ble High Court of Punjab and Haryana.

6. For a suit for malicious prosecution, the plaintiff must establish that: (a) the defendant instituted a criminal proceeding against the plaintiff; (b) the proceeding ended in favor of the plaintiff; (c) the defendant acted without reasonable and probable cause; (d) the defendant acted with malice; and (e) the plaintiff suffered damage as a result. The plaint, as filed, prima facie discloses these elements, as it is based on the plaintiff's acquittal in the criminal case initiated by Defendant No. 2 and alleges malicious intent. The pendency of the revision petition before the High Court does not negate the fact of acquittal at the trial court level, which forms the basis of the plaintiff's claim. Whether the plaintiff can substantiate these claims is a matter for trial and cannot be determined at this stage under Order VII Rule 11 CPC, where the Court is required to consider only the averments in the plaint and not the defense or evidence.

7. The contention of Defendant No. 2 that no cause of action arose on the dates mentioned in the plaint and that the plaintiff has concealed material facts does not suffice to reject the plaint under Order VII Rule 11(a) CPC. The plaint discloses a cause of action based on the alleged malicious prosecution, and the veracity of the plaintiff's claims or the defense of Defendant No. 2 (e.g.,

harassment or concealment of facts) is a matter to be tested during trial. At this stage, the Court finds that the plaint is not barred by law for want of a cause of action.

On the Ground of Non-Payment of Ad Valorem Court Fee

8. The learned counsel for Defendant No. 2 further contends that the plaintiff has not paid the ad valorem court fee on the entire amount claimed as recovery, as required under the Court Fees Act, 1870, and that this renders the suit liable to be dismissed under Order VII Rule 11(b) CPC.

9. The plaintiff's suit is for damages on account of malicious prosecution. As per Section 6 of the Court Fees Act, 1870, read with the relevant provisions of the local amendments, in a suit for damages where the amount is unascertained or contingent (such as in a claim for malicious prosecution), the plaintiff is entitled to value the relief sought at a notional amount and pay the court fee accordingly. The plaintiff has clarified in the reply that the court fee will be paid as per the value of any decree awarded by the Court for damages. This position is consistent with the legal principle that in suits for unliquidated damages, the plaintiff may assign a tentative value to the claim, subject to adjustment if the Court awards a specific amount.

10. The plaint, as filed, does not appear to be deficient in court fee payment at this stage, as the plaintiff has valued the suit for the purpose of court fee and jurisdiction. No material has been placed on record by Defendant No. 2 to demonstrate that the court fee paid is patently inadequate or contrary to the provisions of the Court Fees Act. The objection regarding non-payment of ad valorem court fee is, therefore, not sustainable at this juncture. If the plaintiff succeeds and a decree for damages is passed, the plaintiff will be liable to pay additional court fee as per the decreed amount, as per the provisions of the Court Fees Act. On this point, the learned counsel for the plaintiff rightly placed reliance upon judgment titled as **Amandeep Sidhu v. Ultratech Cement Limited & others MANU/PH/3125/2016** in which it is held as follows:-

“In a suit for damages for compensation for defamation or malicious prosecution- Ad valorem court fees cannot be ascertained at initial stage and suit may be

entertained on thie undertaking of the plaintiff for the payment of ad-valorem court fee at the decree amount.”

11. I have gone through the judgments in case titled as **Dr. Group Captain Hem Raj Garg v. Punjab Relief Society & another RSA No.353 of 2016 (O&M); Mrs. Manjit Kaul v. Mr. Anil Kumar CR No.2123 of 2022 D/d. 01.06.2022; Shiv Kumar Gupta v. Pooja & Anr. CM(M) 106/2021 &CM No.4573/2021 & Dinesh Kumar v. Lekh Raj & Ors. CM(M) 127/2021 & CM No.5389/2021** relied upon by the learned counsel for Defendant No. 2 but the same are on different facts and circumstances.

Conclusion:-

12. In view of the above, the application filed by Defendant No. 2 under Order VII Rule 11 CPC is found to be without merit. The plaint discloses a cause of action for malicious prosecution, and the issue of court fee does not warrant rejection of the plaint at this stage. The contentions of Defendant No. 2 regarding the falsity of the plaintiff's claims or concealment of facts are matters to be adjudicated during trial after evidence is led by both parties.

13. Accordingly, the application dated 02.02.2022 filed by Defendant No. 2 is hereby dismissed. The suit shall proceed as per the schedule fixed by this Court.

Now, case is adjourned to **20.11.2025** for filing written statement on behalf of defendant No. 1. Fresh notice to defendants No. 3 & 4 be issued for date fixed. The Ahland is also directed to properly arrange the case file which is at present in haphazard manner.

Date of Order: 13.08.2025

Sushil
Stenographer-II

(Manish Kumar),
Civil Judge (Senior Division)
Gurugram. (UID No. HR0367)

Note: All the pages of this order have been duly checked and signed by me.

(Manish Kumar)
Civil Judge (Senior Division)
Gurugram (UID No. HR0367)
13.08.2025

(Manish Kumar),
Civil Judge (Senior Division)
Gurugram. 13.08.2025