

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CR No.1661 of 2015 (O&M)
Date of decision : 15.10.2015**

Satbir Singh

.... Petitioner

Versus

Rajender

.... Respondent

CORAM: HON'BLE MR. JUSTICE K.KANNAN

Present: Mr. Keshav Pratap Singh, Advocate
for the petitioner.

Mr. R.B.Gupta, Advocate
for the respondent.

K.Kannan, J. (Oral)

The defendant is the revision-petitioner, before this Court and he is aggrieved by the dismissal of the application for rejection of plaint. The plaintiff had entered into an agreement to sell dated 12.09.2011 with the defendant undertaking to purchase the property of an extent to 52 kanals 15 marla @ Rs.2,28,47,344/- and filed a suit for mandatory injunction and permanent injunction to redeem the lease created by the defendant instead of suing for specific performance and for performing the 'obligation under the agreement' redeeming the mortgage and for executing the sale deed. The defendant took an objection that the suit was not competent in the manner framed and the plaintiff is bound to value the suit on the consideration payable and pay ad valorem court fee thereon. The Court dismissed the application for rejection of plaint.

It is too obvious that the plaintiff was seeking for mandatory injunction for discharge of lease and for execution of sale deed and adopted a dubious method of depositing the Court fee by seeking a mandatory relief on payment of Court fee of Rs.200/-. The

petitioner was justified in his objection that the frame of the suit was bad. The Court ought to have properly construed the actual import of what the reliefs were. The procedure prescribed under Order 7 Rule 11 CPC, when a plea for rejection is made, will allow a Court to adjudge also on whether the relief claimed is undervalued and the Court shall value the relief correctly under Clause (b) of Rule 11. The objection was well taken and the Court could not have merely dismissed the application.

Counsel for the respondent states that he has moved an application for amendment of the plaint in January, 2015.

The Court will consider such an application whether the amendment could be ordered and whether the claim could be construed as within time. The Court will pass an order after hearing objections from the defendant.

The order already passed is modified and the revision petition is disposed of taking note of the subsequent filing of an application for amendment and treating the disposal of the said application as sufficient.

15.10.2015
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(K.KANNAN)
JUDGE