

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 1773 of 2014
Date of decision: -21.8.2015

Baldev Raj

.....Petitioner.

vs.

Satish Kumar

.....Respondent.

CORAM: - HON'BLE MR. JUSTICE KULDIP SINGH

Present: - Mr. Vikram Bajaj, Advocate for the petitioner

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KULDIP SINGH, J. (Oral)

Impugned in the present revision petition is the order dated 21.1.2014 passed by the District Judge, Ferozepur (Annexure P-6) vide which the order dated 1.4.2013 passed by the Civil Judge (Junior Division), Ferozepur (Annexure P-4) was set aside whereby the plaint was rejected under Order VII Rule 11 CPC.

Brief facts of the case are that the respondent/plaintiff filed a suit for grant of decree for mandatory injunction for directing the defendant/petitioner to hand over the possession of the suit property of the plaintiff. It comes out that the case was at the stage of rebuttal and arguments when the trial Court on perusal found that the plaintiff should pay the ad valorem Court fee on the valuation of the said property and the amount claimed, on or before 18.2.2013. After granting few adjournments, request for further adjournment was

declined and the plaint was rejected under Order VII Rule 11 CPC. Plaintiff filed a Civil Miscellaneous appeal before the District Judge, Ferozepur which was allowed on 21.1.2014 stating that both parties have concluded their evidence and let the controversy be decided on merits, subject to payment of costs as mentioned in the order.

The provisions of the Order 7 shows that it pertain to the plaint. Rule 11 CPC laid down the ground when the plaint can be rejected. Now the question would arise as to whether this power can be exercised when the Court has framed the issues and both parties have led their evidence thereon and the case is fixed for arguments

I am of the view that the learned Civil Judge has erred in exercising the powers under order VII Rule 11 CPC when both parties have led their evidence. When there is some alleged deficiency in Court fee and both the parties have led their evidence thereon, the Court has to record the findings on the issue as to whether the Court fee is deficient and, if so, then the parties concerned are required to make up the deficiency of Court fee. In the present case, when both the parties have led their evidence and the lower Court after examining the file found that the Court fee is deficient which was disputed by the plaintiff, the lower Court erred in exercising the powers under Order VII Rule 11 CPC. The said order was rightly set aside by the appellate Court.

Learned counsel for the petitioner-defendant has further argued that the order rejecting the plaint under Order VII Rule 11 CPC is the decree within the meaning of Section 2 (2) CPC and

therefore, regular appeal lies from the said decree and not civil miscellaneous appeal which follow that the Court fee is required to be affixed on the appeal filed before the District Judge and if it is an appeal from the decree of the lower Court. However, in the present case, no such Court fee was affixed. The perusal of the order of the District Judge shows that this question was not raised before the District Judge. Learned counsel for the petitioner further contends that it was a legal issue and such issue should have been considered by the District Judge.

I am of the view that since the question of payment of Court fee was not contested before the District Judge, therefore it cannot be raised before this Court as well. Secondly, this Court has found that the exercise of powers by lower Court under Order VII Rule 11 CPC is illegal and therefore, that order has been rightly set aside. Now the order of the District Judge will merge with the order of this Court. Consequently, now no Court fee is required to be affixed on the appeal filed before the District Judge. As a result thereof, the present revision is dismissed. However, the lower Court while deciding the main suit will decide the issue about the payment of Court fee first before taking the decision on all other issues. In case, the lower Court finds that no excess Court fee is payable then the judgment can be pronounced on all the issues.

In view of the said fact, the present revision is dismissed
in terms of the directions referred to above.

(KULDIP SINGH)
JUDGE

21.8.2015
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