

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 727 of 2015 (O&M)

Date of decision: 21.05.2015

Surinder Kumar Sood

... Petitioner

versus

Sita Devi Shamsher Chand Kuthiala Charitable Trust and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. D.K. Gupta, Advocate for the petitioner.

Mr. G.S. Jaswal, Advocate for the respondents.

K.Kannan, J.

In a suit for recovery of possession as amended, the plaintiff stated that he would be willing to pay the Court fee as and when the Court demanded. The defendant sought for rejection of plaint contending that since the prayer for recovery of possession had been made, *ad-valorem* court fee has to be paid on the value of the property as on the date of suit.

The liability to pay court fee for a person who has made no resort to Order 33 rule 31 CPC is unexceptional. The conduct of the defendant, whether rightful or not in holding the possession is irrelevant and cannot come within the pave of inquiry for consideration of whether the plaintiff could be compelled to pay the Court fee or not. The order passed by the Court below is erroneous in providing a needless ring of discretion to allow the plaintiff to pay at at any time which the plaintiff chose to pay the Court fee. I cannot allow for such an indiscretion to prevail and direct the plaintiff to pay the Court fee on determination of the value of the property. The Court shall appoint a bailiff who shall make a spot inspection and assess the value, if need be, with help of an engineer appointed through Court, on date of suit and demand Court fee to be paid within four weeks from the time when

the valuation report is filed. If the amount is not paid, the consequences of Order 7 rule 11 CPC shall operate against the petitioner. The impugned order is set aside and the case is remitted to the Court below for carrying out the duties assigned through this order.

The civil revision petition is allowed on the above terms.

(K.KANNAN)
JUDGE

21.05.2015
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