

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.8122 of 2015

Date of Decision: December 14, 2015

M/s.Universal Promoters and Developers, Delhi

...Petitioner

Versus

Gian Chand & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Roopak Bansal, Advocate,
for the petitioner.

Mr.Harkesh Manuja, Advocate,
for the respondents.

AMIT RAWAL, J.(Oral)

The petitioner-plaintiff is aggrieved of the order dated 6.11.2015, whereby the application filed by the respondent-defendants for rejection of the plaint on the ground of non-payment of court fees, has been allowed.

Mr.Roopak Bansal, learned counsel appearing on behalf of the petitioner-plaintiff submits that the suit for specific performance of the agreement to sell dated 16.2.2006 was filed on behalf of the petitioner. However, in pursuance to the application filed under Order 7 Rule 11 CPC at the instance of the respondent-defendants, the plaint was rejected as it was suffering from certain inherent defects. Feeling aggrieved against the said order, an appeal was filed before the Lower Appellate Court, which allowed the application, filed by the respondent-defendants, calling upon

the petitioner-plaintiff to pay the court fees. He submits that the application filed for rejecting the plaint does not amount to decree as per Section 2(2) of CPC and, therefore, the appeal filed was not under Section 96 CPC, but a misc.appeal as per Order 43 Rule 1 CPC. In support of his contention, he has relied upon the judgment of the Division Bench of the Andhra Pradesh High Court in **Perumalla Kasi Rao Versus Nukala Muralikrishna, 2014 (1) CivCC 336.**

It would be onerous condition on the petitioner to pay second time court fees and ultimately in case the Court finds that there is substance in the appeal, the matter is remanded back to the trial Court to decide the suit in accordance with law. Since the suit had been disposed of without there being any evidence led, it has not adjudicated the rights between the parties to the lis, therefore, it would be a deemed decree and not a decree in the eyes of law and, therefore, the petitioner-plaintiff is not required to pay the ad valorem court fees. Even assuming for the sake of arguments that the rejection of the plaint amounts to appeal filed under Order 43 Rule 1 CPC and not under Section 96 CPC and accordingly the court fees was paid as per the provisions of Section 7 of the Court Fees Act and, therefore, the trial Court has committed illegality and perversity in entertaining the application filed by the respondent-defendants. He further submits that the subject matter vis-a-vis the valuation of the appeal was not the same as in the appeal, prayer was made to set-aside the order rejecting the plaint and, therefore, in consonance with the relief sought in the appeal, the court fees of ₹10/- had been paid.

Mr.Harkesh Manuja, learned counsel appearing on behalf of the respondent-defendants submits that as per the definition of Section 2(2), it

leaves no manner of doubt that the order rejecting the plaint tantamounts to the decree. The petitioner-plaintiff would be at liberty to move an application under Section 13 of the Limitation Act for refund of the court fees, therefore, it would be no onerous for the petitioner-plaintiff to pay the court fees in an appeal. In support of his contention, relies upon the Full Bench judgment of the Andhra Pradesh High Court rendered in **Molugu Ram Reddy Versus Molugu Vittal Reddy, 2011(3) CivCC 809**, which, after dealing the controversy in extenso, held that the appeal against the rejection of the plaint would be under Section 96 CPC and not misc.appeal. Similar view has been culled out by the Division Bench of the Delhi High Court in **Absolut Apparels Versus Vanishree Enterprises and Ors., 2007(142) DLT 221**.

He further submits that the subject matter of the appeal would remain the same even after filing of the appeal against the order rejecting the plaint. In support of his contention, relies upon the Division Bench judgment of Madhya Pradesh High Court in **M.G.Tipnis Versus Secretary, Ministry of Commerce, Union of India, New Delhi and others, 1970 AIR (M.P.) 5**.

I have heard the learned counsel for the parties and appraised the paper book.

I am of the view that the revision petition is liable to be dismissed on the following reasons:-

Division Bench of Madhya Pradesh High Court in **M.G.Tipnis' case (supra)** in paragraph 6 of the judgment by relying upon the observations made in **Subarna Rekha Versus Ramkrishna Devo, AIR 1968 Andhra Pradesh 239** held that subject matter of the appeal would not

be different in case the appeal against the order of rejection of plaint under Rule 11(a) or Rule 11(d) of Order 7 CPC has been filed. It is the relief in the suit and as well as in the appeal which has to be seen. The rejection of the plaint would not be having effect of a decree and the remand of the suit for trial on merits for the purpose of granting the reliefs cannot be claimed in the plaint. The court fees payable in this case would be governed by Schedule 1 of Article 1 of the Act, i.e., ad valorem of the subject matter of the dispute and not fixed one. Even the Rajasthan High Court in **Dharam Chand Versus Punam Chand**, 1952(2) ILR (Rajasthan) 195 has culled out the same ratio decidendi.

The Hon'ble Delhi High Court in **M/s. Sehgal Industrial Works Versus M/s.Tru-Temp Industries & Ors.**, 1986(11) DRJ 71 has also held that it would be an appeal under Section 96 of the CPC and not a misc.appeal. The Full Bench of Andhra Pradesh High Court in **Molugu Ram Reddy's case (supra)**, after discussing the judgment of the Hon'ble Supreme Court and various other Courts, held that the appeal would be under Section 96 and not under Order 43 Rule 1 CPC. In fact, it is barred in law.

There is another aspect of the matter.

The petitioner-plaintiff would be entitled to seek refund of the court fees, purported to have been filed while filing of the suit by invoking provisions of Section 13 of the Limitation Act.

I am of the view that the impugned order calling upon the petitioner-plaintiff to pay ad valorem court fees on the subject matter of the appeal treating it to be subject matter of the suit does not suffer from any illegality and perversity, much less cannot be said to be without jurisdiction.

Mr.Roopak Bansal submits that the time granted by the Lower Appellate Court for payment of the court fees has expired. He submits that his client would not averse in case reasonable time is granted for payment of court fees. In case any court fees is paid within one month, the Lower Appellate Court shall decide the appeal in accordance with law.

Revision petition stands dismissed.

December 14, 2015
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(AMIT RAWAL)
JUDGE