

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 2745 of 2016

Date of Decision: 19.05.2016

Baghel Singh

... Petitioner(s)

Versus

Vikas Singla

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Sanjiv Gupta, Advocate
for the petitioner(s).

Shekher Dhawan, J.

Present petition under Article 227 of the Constitution of India for setting aside order dated 19.2.2016, whereby objection petition of the petitioners regarding affixation of the court fee was rejected and finding was recorded that required court fee has been affixed in the appeal.

Facts relevant for the purpose of decision of the petition that appeal was filed against the judgment & decree dated 20.3.2015, whereby suit of plaintiffs for recovery of ₹ 8,50,000/- and for permanent injunction was dismissed.

Learned counsel for the petitioner submitted that the Court below fell

Court is to see that the court fee which is required to be affixed on the appeal and not the court fee required to be affixed at the time of filing of the civil suit before the Court of first instance. In support of his arguments, reliance was placed upon the judgment rendered by the Division Bench of the Andhra Pradesh High Court in ***V.V.L.Narayana Rao v. Corporation Bank, Vijayawada, represented by its Manager and Others*** 2012 AIR (A.P.) 138 and view taken by the Madras High Court in ***S.S.Durai Pandian and Another v. S.S.Pandian*** 2012(5) CTC 610.

Having considered the submissions made by learned counsel for the petitioners; appraisal of the record of the case and after going through the views taken by the Andhra Pradesh High Court in ***V.V.L.Narayana Rao's case*** (*supra*) and the Madras High Court in ***S.S.Durai Pandian's case*** (*supra*), this Court is of the considered view that the facts of the present case are distinguishable from the facts of the aforesaid cases. The Court below has rightly placed reliance upon the view taken by the Hon'ble Apex Court in ***State of Bombay v. Supreme General Films Exchange*** AIR 1960 SC 980, wherein it was observed as under:-

“That a right of appeal is a substantive right cannot now be seriously disputed. It is not a mere matter of procedure. Prior to the amendment of 1928 there was an appeal against an order refusing to set aside a sale (for that is the effect also where the application to set aside the sale is dismissed for default) under the provisions of Order 43, rule (1), of the Code of Civil Procedure. That right was unhampered by any restriction of the kind now imposed by S. 174(5), proviso. The Court was bound

to admit the appeal whether the appellant deposited the amount recoverable in execution of the decree or not.”

In view of above, the Court below has taken the correct view of the matter and there is no ground to interfere in the impugned order by way of present petition. Consequently, present petition is hereby dismissed being devoid of any merit.

(Shekher Dhawan)
Judge

May 19, 2016
“DK”