

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 3573 of 2016 (O&M)

Date of Decision: May 23, 2016.

Naresh Kumar and Others.

---Petitioners

versus

Sulakhan Ram and Others.

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Pardeep Bajaj, Advocate
for the petitioners.

Rekha Mittal, J. (Oral)

The present petition has been directed against order dated 14.01.2016 passed by the Civil Judge (Junior Division), Jalalabad, dismissing the application filed by the petitioners/defendants under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (in short 'CPC') for rejection of plaint for want of payment of Court fee.

Counsel for the petitioners would contend that by way of filing the suit for declaration and injunction, the plaintiffs/respondents want to forfeit the earnest money of Rs.1,36,70,000/- and they are required to pay ad volarem Court fee on the said amount. It is further submitted that to decide the question of liability to pay Court fee, it is the substance of the claim made in the suit that is to be considered carefully and clever drafting of a plaint cannot be allowed to enure to the benefit of the plaintiff to avoid payment of Court fee. For this purpose, he has referred to judgment of this Court Anil Rishi vs. Gurbaksh Singh, 1998 (3) R.C.R. (Civil) 135.

I have heard counsel for the petitioners and perused the paper book particularly the impugned order.

There cannot be any dispute about the position in law laid down in the referred authority that the plaintiff cannot be permitted to avoid payment of requisite and prescribed court fee in the garb of cleverly drafted prayer clause. However, in the case at hand, the plaintiffs have filed the suit seeking declaration that the agreement stands cancelled and the earnest money stands forfeited. Keeping in view the nature of dispute involved, I do not find any error much less illegality in the impugned order warranting intervention.

For the reasons aforestated, finding no merit, the petition fails and is accordingly dismissed in *limine*.

(Rekha Mittal)
Judge

May 23, 2016
Rishabh Kumar