

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 4672 of 2014

Date of Decision: 02.05.2016

Manjit Singh

... Petitioner(s)

Versus

Amninder Singh

... 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. Pritam Saini, Advocate
for the petitioner(s).

Respondent ex parte.

Shekher Dhawan, J.

Present petition under Article 227 of the Constitution of India, filed by defendant/petitioner, is challenge to the order dated 23.5.2014, passed by learned Additional Civil Judge (Senior Division), Roopnagar whereby application under Order 7 Rule 11 CPC was accepted.

Learned counsel for the petitioner submitted that plaintiff had filed suit for permanent injunction restraining the defendant from alienating the suit property to anybody else except the plaintiff.

Petitioner/defendant filed counter-claim in the said suit and prayed that agreement dated 27.9.2011 is a result of fraud and legally not enforceable. As per petitioner, payment of ₹ 29,45,000/- was never made to him. Learned counsel for the petitioner also submitted that FIR No. 107 dated 19.11.2011, under Sections 418 & 420 IPC was registered at Police Station Sadar, Ropar against the plaintiff and he was arrested on 30.11.2011 and criminal case is still pending.

After filing of the counter-claim by the petitioner, civil suit was withdrawn as suit for specific performance was filed. However, during the pendency of counter-claim, plaintiff filed an application under Order 7 Rule 11 CPC thereby making a prayer that counter-claim is required to be affixed along with Court fee on the valuation of ₹ 21,45,000/-, whereas court fee of ₹ 50/- only has been affixed. The petitioner has taken a specific plea that required court fee has already been affixed on the counter-claim because only declaration was sought in the counter-claim and relief of possession was not claimed. Not even a single penny has been paid or transferred in the account of the petitioner. Prayer made by the petitioner is regarding cancellation of the documents. But the Court below has not considered this fact while passing the order under challenge. On filing of the petition, notice was issued to the respondent but he failed to put in appearance and as such respondent was proceeded against *ex parte* on 17.10.2014.

Having considered the submissions made by learned counsel for the petitioner and having gone through the record of the case, this Court is of the considered view that the legality and validity of

the agreement is a matter of controversy which is to be decided by the Court below. However, petitioner having filed counter-claim has sought for declaration only and for that purpose, court fee of ₹ 50/- has been affixed. In the application, challenge is for cancellation of documents and relief of possession has not been claimed as a consequential relief and that way *ad valorem* court fee is not required to be affixed in the present case.

Such a controversy was before this Court in ***Teja Singh v. Smt. Amar Kaur & Others 2008(1) Civil Court Cases 531 (P&H)*** and this Court took the view that as relief of possession as a consequential and substantive relief was not claimed. Article 1, Schedule 1 of the Court Fees Act is applicable only if the possession is claimed either directly or indirectly as consequential relief. Such a view was also taken by the Full Bench of this Court in ***Niranjan Kaur v. Nirbigan Kaur 1982 PLR 427*** and by Co-ordinate Bench of this Court in ***Ran Singh and Another v. Jai Narain 2011(2) PLR 176***. Since petitioner has not claimed possession as a consequential relief, the findings recorded by the Court below that *ad valorem* court fee is required to be affixed, is wholly unsustainable. For the purpose of determination, whether the *ad valorem* court fee has to be affixed, one has to go through the averments made in the plaint and the averments made in the written statement are not required to be examined.

In the present case, averments made in the counter-claim were required to be seen and on the basis thereof, it is apparent that petitioner has not claimed possession and, therefore, it is simpliciter a

claim for declaration that agreement in question is null and void and for that purpose appropriate court fee has been affixed. The Court below has not considered these facts while passing the order.

Consequently, the present petition is allowed and order dated 23.5.2014, passed by the Court below, is set aside as the same is suffering from patent illegality and irregularity causing injustice to the petitioner.

(Shekher Dhawan)
Judge

May 2, 2016
"DK"