

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 6285 of 2015(O&M)
Date of decision : May 13, 2016

Davinder Singh

..... Petitioner

Versus

Joginder Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vivek Gautam, Advocate
for the petitioner.

Mr. Vishal Aggarwal, Advocate
for the respondent.

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?

Amit Rawal, J (oral).

The petitioner-plaintiff is aggrieved of the impugned order whereby the application at the instance of the respondent-defendant filed under Order 7 Rule 11 CPC for rejection of plaint for non-payment of ad valorem court fee in the suit seeking declaration of the agreement to sell dated 29.10.2009 being bad, illegal etc.has been allowed.

Learned counsel for the petitioner submits that the agreement to sell has not been admitted. It is categorically mentioned in the plaint that signature on the agreement to sell are forged and fabricated. The petitioner is also not executant of the same, therefore the ad valorem court fee is not required to be paid.

He, on having taken instructions from his client, submits that in case the petitioner has not been able to prove assertion of the plaint undertaken to pay court fees at the time of adjudication of suit, thus, urges this Court for setting aside the impugned order.

Learned counsel appearing on behalf of the respondents submits that court fee has to be paid at the first instance. Only averments in the plaint have to be seen. On reading of the plaint, prima facie it is revealed that plaintiff is trying to avoid execution of the agreement to sell by taking up the plea of fraud and mis-representation, much less forgery, thus urges this Court for affirming the impugned order.

I have heard learned counsel for the petitioner and appraised the paper book and of the view that since petitioner-plaintiff has lead evidence in the suit based on alleged fraud, mis-representation and forgery, prima facie he is rendered to be non-executant of the aforementioned agreement and therefore in his wisdom did not pay court fee. In case, the plaintiff is able to prove the assertions made in the plaint, of course would not be liable to pay court fee, and if, ultimately the court arrives at a conclusion on examination of oral and documentary evidence that agreement to sell bore his signatures then he would be directed to pay court fee as per the value mentioned in the agreement to sell.

The aforesaid undertaking has been given by the learned counsel for the petitioner on instructions from his client.

With the observations made above, the impugned order is set aside. The civil revision stands disposed of.

(AMIT RAWAL)
JUDGE

May 13 , 2016
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