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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6977-2015 (O&M)

Date of decision : 29.11.2016

Ashok Kumar and another

... Petitioners

Versus

Karnail Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Munish Gupta, Advocate
for the petitioners.

Mr. Maninder Arora, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The petitioners-defendants are aggrieved of the impugned order dated 19.08.2015, whereby the application under Order 7 Rule 11 of the Code of Civil Procedure for the payment of Court fee on the total amount agreed @ ₹ 27 Lacs per bigha, has been dismissed.

Mr. Munish Gupta, learned counsel appearing on behalf of the petitioners-defendants submits that as per the aforementioned calculations, the amount arrived at would be ₹ 19,49,40,000/-, whereas the Court fee has been paid only on a sum of ₹ 3,90,00,000/-. There has been a misreading of the agreement to sell and it is, in this background of the matter, the application, aforementioned, has been filed, but the same has erroneously been dismissed. No doubt, regarding the payment of Court fee, it is between the plaintiff and the Court, but the right of raising objection cannot be taken away. The agreement to sell has to be read *in toto*, but not in

isolation.

He further submits that as per his statement made before the Court, he is stated to have been received a sum of ₹ 5,72,0000/- and not ₹ 10,00,000/- as indicated in the agreement to sell, therefore, an irresistible conclusion drawn is that the total price was not ₹ 3,90,00,000/-, but ₹ 19,49,40,000/-, thus, urges this Court for setting aside the impugned order under challenge.

Per contra, Mr. Maninder Arora, learned counsel appearing on behalf of respondent No.1/plaintiff submits that the suit is for cancellation of the agreement to sell. No doubt the application under Order 7 Rule 11 CPC can be filed at any stage, but for the purpose of rejection of the plaint, only the averments made therein, have to be seen. Once the agreement to sell envisages the receipt of the earnest money of ₹ 10,00,000/- and the balance of ₹ 3,90,00,000/- at the time of the execution and registration of the sale deed i.e. 30.07.2012, the Court fee on the aforementioned amount has been paid and therefore, the application was wholly misconceived and rightly so, has been dismissed, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that since the respondent(s)-plaintiff(s) has sought the cancellation of the agreement to sell dated 09.03.2011 and the Court fee, according to his calculations, has been paid, it is too premature to adjudicate upon the payment of Court fee as the interpretation of the documents is within the domain/realm of the Civil Court. The suit is slated for plaintiff's evidence. In case, the assertion of Mr. Munish Gupta, learned

counsel representing the petitioners-defendants is found to be correct that can be looked into at the final stage, but not at this stage.

For the foregoing reasons, I do not find any illegality and perversity in the impugned order under challenge and accordingly, the same is hereby upheld. The revision petition stands dismissed.

29.11.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned

Yes/ No

✓

Whether Reportable

Yes/ No