

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.4977 of 2016 (O&M)

Date of decision : 22.12.2016

Amrik Singh

...Appellant

Versus

Gurdeep Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. B.S. Guliani, Advocate for the appellant.

AMIT RAWAL, J. (Oral)

CM No.12965-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 13 days in filing the present appeal is condoned.

Application stands allowed.

Main Case

Mr. B.S. Guliani, Advocate for the appellant submits that lower Appellate Court has dismissed the appeal on account of the non-payment of the court fees without giving any opportunity and has relied upon the para No.12 of the findings to contend that no opportunity to do the needful has been given. He further submits that aforementioned observations are totally against the provisions of Section 12 of the Courts fees.

I have gone through the impugned judgment and decree of the lower Appellate Court and the findings given by the lower Appellate Court are reproduced hereinbelow:-

“11. Having heard the respective submissions of the learned counsel appearing on behalf of the respective parties, besides perusing the record of the Trial Court, carefully and cautiously, with the able assistance of the learned counsel appearing on behalf of the respective parties, this Court is of the considered opinion that while adjudicating the lis, the learned Trial Court has failed to notice that the suit of the appellant was not properly valued and stamped. The prayer made in the plaint is to declare the sale deed dated 10.02.1995, Ex.P2, as null and void, the mutation proceedings and mutation done in the name of respondents as null and void. The plea of the appellant is that sale deed was obtained by fraud. In the suit framed for declaration, the appellant/plaintiff has primarily claimed the relief of cancellation of registered sale deed allegedly executed by him. Since the prayer was to seek cancellation of the sale deed, therefore, Court fee had to be paid on the sale consideration mentioned in the sale deed dated 10.02.1995, Ex.P2. The appellant in his suit ought to have filed the ad valorem court fee, but the appellant neither affixed the ad valorem court fee in his suit nor he has affixed the ad valorem court fee in the instant appeal. Even no application has been preferred by the appellant before this Court seeking time to affix the ad valorem court fee. The Hon’ble Punjab and Haryana High Court in Ajey Textile v. The British India Corporation, ILR 1979 (2) Punj & Har 127, held that the provisions of Order 7 Rule 11 do not apply to appeals and that the Appellate Court is entitled to reject an appeal if the Full Court-fee has not been paid

without calling upon the appellant to pay the deficient Court-fee, because in so far as the memorandum of appeal is concerned, ex-press provision has been made in Order 41, Rule 3, for its rejection on the grounds stated in that rule. It was further observed that the appellate Court was not bound to allow the appellant an opportunity to make up the deficiency in Court-fee after the expiry of the period of limitation for preferring the appeal.

12. Before the appellant can be permitted to urge that the decision of the trial Court on the issues was wrong, a proper memorandum of appeal had to be filed. The Court-fee on the memorandum of appeal had to be affixed in accordance with the relief claimed in the plaint. Unless this is done, there is no proper memorandum of appeal before this Court and it is not open to this Court to consider the merits of the argument so far as the issues decided by the learned Trial Court are concerned. There being no properly constituted appeal before this Court, as such, the merits of the appeal cannot be gone into and decided in these proceedings.

13. The Hon'ble Supreme Court in M. Ramnarain Private Limited and Anr. v. State Trading Corporation of India Limited, 1983 AIR 786 has ruled that the appeal which is filed without adequate payment of the requisite Court fee payable in respect of such an appeal against the decree would be an incompetent appeal and an appeal which is not competent is necessarily bound to fail, and in such a case the proper course for an appellant would be to file a valid and competent appeal.

14. For the reasons indicated above, this Court holds that there is no properly constituted memorandum of appeal under Order 41, Rule 3, and that the memorandum of appeal merits rejection. This Court, consequently dismiss

the instant appeal being incompetent appeal. No order as to costs. Trial court record, alongwith copy of judgment of this Court, be returned, and appeal file be consigned to the record room.”

Provision of Section 12 of the Courts fees Act, which reads thus:-

12. Decision of questions as to valuation.—

(i) Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this Chapter on a plaint or memorandum of appeal, shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

(ii) But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section 10, paragraph (ii), shall apply.

leaves no manner of doubt. In case, it is so, opportunity of correcting the memorandum of court fees should have been given and appeal should not have been dismissed on the ground of non-payment of courts fee.

Mr. Guliani, Advocate submits that in suit for declaration, setting aside of the sale deed dated 10.02.1995 was sought. Since appellant-plaintiff was party to the same, courts fees were required to be paid as per the judgment rendered by Hon'ble Supreme Court in *Suhrid Singh @*

Sardool Singh vs. Randhir Singh and ors. AIR 2010 SC 2807.

At this stage, Mr. Guliani, Advocate submits that he is willing to pay the court fees provided the opportunity be given as the entire trial had been commenced.

Accordingly, impugned judgment and decree of the lower Appellate Court is set aside. Matter is remitted back to the lower Appellate Court.

I do not deem it appropriate to issue notice of motion to the other side as dispute is of the Courts fees between the Court and the party and calling upon them will defray the litigation expenses. However, it will be subject to the cost of Rs.5,000/-.

Parties through their counsel are directed to appear before the lower Appellate Court on 17.01.2017.

Registry is directed to ensure the presence of the respondents in appeal.

Disposed of.

22.12.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No