

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.10 of 2013 (O&M)
DECIDED ON: May 10, 2017

M/S J.K. CEMENT WORKS KANPUR
AND ANR.

.....PETITIONERS...

VERSUS

M/S KESHYAN BROTHER X-65,
LOHA MANDI NARAINA (DELHI)
AND OTHERS

....RESPONDENTS...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Pankaj Jain, Advocate
for the petitioners.

Mr. Sanjay Vij, Advocate,
for the respondents.

JASPAL SINGH, J.

Challenge in this civil revision petition preferred under Article 227 of the Constitution of India is for quashing of order dated 17.12.2012 passed by Additional District Judge, Gurgaon whereby an application filed by the petitioner for rejection of the cross objections filed by the respondents on account of non-payment of requisite court fee as required under law has been dismissed and further for rejection of cross objections/cross appeal filed by the respondents against the findings recorded by the trial court on issues No. 2 to 5 being not maintainable for want of affixation of requisite court fee as well as for staying further proceedings in the appeal pending before the aforesaid court.

2. The facts giving rise to the instant petition are that the petitioner filed a suit for recovery of Rs.56,74,782.29 against the respondents. The said case was contested by the respondents on various grounds and while deciding the

same on merits, it stood dismissed vide judgment and decree dated 03.03.2011 passed by Additional Civil Judge (Senior Division), Gurgaon.

3. Aggrieved against the dismissal of aforesaid suit for recovery, the petitioner preferred first appeal before the District Judge which was entrusted to the Court of Additional District Judge, Gurgaon for disposal. Subsequent to the filing of the said appeal preferred by the petitioner, respondents also preferred cross-objections challenging the findings recorded by the Court on some of the issues decided against them by lower court. Seeking rejection of the said cross objections on account of non-payment of requisite court fee, the petitioner filed an application, which was dealt with and disposed of by lower appellate court and the said application was rejected vide impugned order dated 17.12.2012, which necessitated the filing of the instant civil revision petition, observing that the court fee is not required to be paid like that on the memorandum of appeal.

4. Now, the sole question which requires determination in the instant civil revision petition is whether the respondents were liable to affix or pay ad valorem court fee on the cross objections, whereby they have challenged the findings recorded by the trial court on some of the issues like that on the memorandum of appeal and in view of the facts and circumstances of the instant case, the answer to this question is in the negative for the reasons to be recorded hereinafter.

5. Undisputably, the petitioner filed a suit for recovery of Rs.56,74,782.29 against the objector M/s Keshyan Brothers etc./respondents and the said suit stood dismissed vide judgment and decree dated 03.03.2011 passed by Additional Civil Judge (Senior Division), Gurgaon particularly in view of the findings recorded on issue No.1 holding that the suit has not been filed by the duly authorised and competent person. Unsuccessful plaintiff(s)-

petitioner(s) have already filed an appeal which is pending disposal before the Additional District Judge, Gurgaon in which the respondents have also filed cross-objections while challenging the findings recorded by the trial court on issues No. 2 to 5 claiming that the same are absolutely illegal and erroneous.

6. No doubt, no court fee at ad valorem rate has been affixed or paid on the cross objections but it is not an illegality. In fact, no such court fee is required to be affixed in view of the facts and circumstances of the case in hand. Though, while filing cross objections, the respondents have challenged the findings recorded by trial court on issues No. 2 to 5 but they have not assailed the judgment or decree in question. Rather, it can be said that there is no decree passed by the trial court against the respondents/cross-objectors and, as such, they were also not obliged to challenge the said decree. The suit of the plaintiffs/petitioners has been dismissed while recording findings only on issue No.1.

7. Here, it would also be pertinent to mention that where the cross objections are in lieu of cross appeal as projected by Order 41 Rule 22 (1) of the Code of Civil Procedure (for short, "Code"), it would attract Article 1-A of the Court Fees Act and ad valorem court fee is payable but where the cross-objections have been filed merely against the reverse findings, the aforesaid provisions contained in Article 1-A of the Court Fees Act is not at all attracted.

8. Adverting to the facts of the case in hand, cross objections have been filed by the respondents against adverse findings and not in lieu of the cross appeal and, as such, the same are to be dealt with in a different manner for the purposes of court fee particularly, when the cross objectors in the instant case are not claiming modification and variation of the decree and are aggrieved only by findings recorded on issues No. 2 to 5 in the judgment.

9. Considering the case of the petitioner from another angle also, the respondents/cross objectors are not required to pay the court fee. It is well settled proposition of law that an appeal is nothing but rehearing of the suit. Under Order 41 Rule 33 of the Code, the person defending the appeal, who is though aggrieved with regard to the findings recorded on some of the issues but has not filed the appeal, still has got a right to argue the matter to get the adverse findings recorded against him reversed. In such a situation, no cross appeal is required to be filed after the introduction of the provisions contained under Order 41 Rule 33 of the Code.

10. In short, it can be safely observed that the respondents has got a legal right not only to support the decree on any ground whether decided in his favour or against him without filing any appeal or cross objections to the decree assailed of against him but also to lay challenge to the decree by filing cross objections against any adverse findings or part of the decree but in that situation, court fee is not required to be paid. Thus, taking the case of the petitioner from either of the angle, this Court is of the considered view that there is no illegality, infirmity or impropriety in the impugned order dated 17.12.2012 and the same is absolutely in consonance with the legal proposition.

11. As a consequence of the aforesaid discussion, finding no merit in the instant civil revision petition, the same is dismissed. No order as to costs.

May 10, 2017
sonika

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes/No