

CR No. 25 of 2017
DECIDED ON: FEBRUARY 01, 2017

While assailing the impugned order, it has been argued with vehemence by learned counsel for the petitioners that respondent/plaintiff filed a suit for permanent injunction restraining the defendants/petitioners from forcibly and illegally interfering in any manner in their peaceful proprietary possession over the shops which are the subject matter of instant *lis* and further for restraining the petitioners/defendants from forcibly and illegally

demolishing/dismantling the shops in question as well as for mesne profits/use and occupation charges @5000/- per month w.e.f. February 08, 2013, the date when the defendants/petitioners demolished the afore-said shop till its actual payment of damages and for restraining the defendants/petitioners from changing the nature of the suit property and raising any construction over the sites of shops in dispute in any manner.

During the pendency of suit, an application under Order VII Rule 11 of the CPC was filed by the defendants/petitioners on the ground that neither any cause of action has been arisen to the plaintiff/respondent nor *ad valorem* court fee required to be affixed on the plaint, has been paid. However, the said application has been dismissed by learned trial Court by mis-construing the actual facts as well as legal proposition applicable to the facts and circumstances of the case in hand. It has been simply observed by learned trial Court that only the averments made in the plaint are to be taken into consideration at the time of dealing with an application under Order VII Rule 11 of the Code. In fact, the plaint does not disclose any cause of action and *ad valorem* court fee has also not been affixed on the plaint. Thus, the impugned order is not sustainable in the eyes of law and is liable to be set aside. Consequently, an application under Order VII Rule 11 CPC deserves to be accepted.

This Court has given a deep thought to the various submissions made by learned counsel for the petitioners and is of the considered view that the same are without any legal weight.

In fact, the impugned order is absolutely in consonance with the legal proposition. It is well settled proposition of law that while deciding an

application under Order VII Rule 11 CPC only averments made in the plaint are to be taken into consideration. As far as the cause of action is concerned, the plaint is required to be scrutinized whether it discloses the cause of action and at this stage the allegations/averments made in the written statement are not relevant. So far as the affixation of *ad valorem* court fee on the occupation charges is concerned, the law is very much clear that if some arrears on account of past mesne profits have been claimed through the suit, the plaintiff is under obligation to pay the *ad valorem* court fee on the said amount and if subsequent to the suit or from the date of suit the mesne profit has been claimed then these are to be calculated at the time of passing of judgment and decree.

Thus, this Court is of the considered view that there is no infirmity or illegality in the impugned order. As such it stands dismissed.

FEBRUARY 01, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*