IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No.3151 of 2017 (O&M)
Date of Decision:- 07.07.2017

Fuljit Kumar ....Petitioner

vs.

U.K. Paints (India) Pvt. Ltd. and others ....Respondents

***

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

***

Present:- Mr. Parveen K. Kataria, Advocate,
for the petitioner.

Mr. Sanjeev Anand, Advocate with
Mr. Kirpal S. Thakur, Advocate,
for respondent No.1.

***

DAYA CHAUDHARY, J.

Petitioner-Fuljit Kumar has filed the present revision petition under Article 227 of the Constitution of India for setting aside impugned order dated 10.4.2017 (Annexure P-1) whereby the application filed by defendant-respondent No.1 under Order 7 Rule11 CPC has been allowed and petitioner and respondents No. 2 and 3 have been asked to pay ad valorem Court fee.

Briefly, the facts of the case, as made out in the present revision petition are that petitioner along with his brothers i.e. respondents No.2 and 3 entered into an oral agreement for purchase of property from respondent No.1 and an amount of ₹ 1,35,00,000/- was also paid. It was agreed between the parties that defendant-respondent No.1 would get the land revenue partitioned and thereafter sale deed was to be executed. Petitioner and his brothers waited for sufficiently long period but the land was not got partitioned so a legal notice was sent by petitioner and his brothers i.e. respondents No. 2 and 3 through their counsel. Reply to legal notice was sent wherein it was admitted that an amount of ₹ 1,35,00,000/- was received as earnest money but the agreement entered into between the parties was stated to be terminated as land in dispute was not partitioned. Thereafter, petitioner and respondent Nos. 2 and 3 filed a suit for mandatory injunction against respondent No. 1 to get the land partitioned or in the alternative, to return the earnest money to the petitioner and respondent Nos. 2 and 3. Respondent No.1 put in appearance in the suit and filed an application under Order 7 Rule 11 CPC for permission to affix ad valorem court fee. Reply to that application was filed which was allowed vide order dated 10.4.2017 and petitioner was directed to affix ad valorem court fee on the specific amount of ₹ 7 crores, which is the subject matter of challenge in the present revision petition.

Learned counsel for the petitioner submits that contents of plaint are to be seen and not the other pleadings. There was no mention of ₹ 7 crores in the plaint and it was only mentioned that he has paid earnest money of ₹ 1,35,00,000/- and Court fee of ₹ 3,08100/- on the amount is to be recovered. Learned counsel for the petitioner submits that Court fee was affixed by considering the amount of earnest money. Learned counsel also submits that the trial court has given contradictory observation in the order as on one hand, it has been stated that the plaintiffs instead of filing a suit for specific performance have filed a suit for mandatory injunction to execute the sale deed after getting the property partitioned whereas on the other hand, it has been observed that by way of present suit, the plaintiffs wanted specific performance of the agreement. Learned counsel also submits that the Court has failed to observe that the suit for specific performance was premature as respondent No.1 was required to get the land partitioned before execution of sale deed. Learned counsel for the petitioner also submits that without giving any finding as to on what basis the court fee was to be paid in a suit for specific performance of oral agreement or the suit for specific performance was maintainable when relief has been sought for getting the land partitioned. Learned counsel also submits that more than one prayer has been made in the suit and without considering this fact the suit can be rejected only on this ground alone; without framing any issue, as to "whether the plaintiff can file suit for specific performance of agreement or not and what will be the consequences". At the end, learned counsel for the petitioner submits that the impugned order has been passed without taking into consideration the relevant provisions and settled proposition of law. Learned counsel for the petitioner has also relied upon judgments of Hon'ble the Supreme Court passed in **Saleem Bhai and others vs. State of Maharashtra and others, 2003 (1) RCR (Civil) 464, Gunwantbhai Mulchand Shah and others vs. Anton Elis Farel and others, 2006(2) RCR (Civil) 251** and a judgment of Delhi High Court passed in CS (OS) No.2546 of 2010 titled as **Anu vs. Suresh Verma and others,** decided on 12.7.2011 in support of his contentions.

Learned counsel for defendant-respondent No.1 has opposed the submissions made by learned counsel for the petitioner on the ground that the plaintiff-petitioner has claimed relief for specific performance in the garb of mandatory injunction without paying the court fee. The total sale consideration amount is to be considered for payment of court fee and not the earnest money. Learned trial Court has rightly passed the order by allowing the application filed by defendant-respondent No.1 to pay the Court fee. He has also relied upon the judgments passed by Hon'ble the Apex Court in **Liverpool & London S.P. & I. Association Limited vs. M.V. Sea Success I and another, 2004 (9) SCC 512, Hardesh Ores Pvt. Ltd. vs. M/s. Hede and Company, 2007 (3) RCR (Civil) 157, Shamsher Singh vs. Rajinder Prashad and others, (1973) 2 SCC 524, N.V. Srinivasa Murthy and others vs. Mariyamma (dead) by Proposed LRs and others, (2005) 5 SCC 548** and a judgment of this Court passed in the case of **ABN AMRO Bank vs. Punjab Urban Planning & Development Authority, 1999 (4) RCR (Civil) 197** in support of his contentions.

Heard arguments of learned counsel for the parties and have also perused the impugned order dated 10.4.2017 whereby the application filed by defendant-respondent No.1 under Order 7 Rule 11 CPC has been allowed and petitioner and respondents No. 2 and 3 have been directed to pay ad valorem court fee on an amount of ₹ 7 crores by considering the suit as specific performance.

For determination of the controversy in hand, provisions of Order 7 Rule 11 CPC are relevant which are being reproduced as under:-

> *"Order 7 Rule 11 : Rejection of plaint – The plaint shall be rejected in the following cases :-*
> *(a) where it does not disclose a cause of action;*
> *(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to*

correct the valuation within a time to be fixed by the court, fails to do so ;
(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
(d) where the suit appears from the statement in the plaint to be barred by any law;
(e) where it is not filed in duplicate;
(f) where the plaintiff fails to comply with the provisions of rule 9;
Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

On perusal of above said provision, it is apparent that the plaint is liable to be rejected when it does not disclose a cause of action or the suit is barred by law. It is also to be seen whether the ad valorem court fee is to be affixed by considering the relief sought for in the suit. In the present case, the suit has been filed for grant of mandatory injunction for issuing a direction to defendant for getting the land partitioned. The agreement to sell was oral and the alternative prayer was to return the earnest money received from plaintiff. Plaintiff has affixed court fee of ₹ 3,08,100/-. Defendant-respondent No.1 had filed an application under Order 7 Rule 11 (b) 1 (c) and (d) of CPC to affix the ad valorem court fee on the amount of ₹ 7 crores, failing which, the suit was liable to be rejected. Said application was contested by the plaintiff by filing reply stating therein that the application was not legally maintainable as the question of court fee cannot be decided in the application as no written statement to the suit was filed. Learned counsel submits that suit was filed for specific performance to get the land partitioned.

Now, the question for consideration by this Court is as to whether the ad valorem court fee is to be affixed on total amount of consideration or on the earnest money.

As per settled proposition of law for deciding the application under Order 7 Rule 11 CPC, the contents of the plaint are to be seen. On a perusal of suit filed by plaintiff, it is clear that there is no mention of ₹ 7 crores in the plaint as total consideration. The petitioner-plaintiff has only mentioned that he has paid earnest money of ₹ 1,35,00000/- and also the Court fee of ₹ 3,08,100/- which are to be recovered. The amount of ₹ 7 crores has been mentioned only in the application filed by respondent No.1-defendant. The Court is to decide the application under Order 7 Rule 11 CPC on the basis of documents and the averments made in the plaint. The trial Court can exercise the powers under Order 7 Rule 11 CPC at any stage of the proceedings before registering the plaint or after issuance of notice to the defendant at any time before conclusion of the trial. For deciding the application under clause (a) and (d) of Rule 11 of Order 7 CPC, only the averments of the plaint are to be taken into consideration and the pleas taken by defendant in the written statement would be totally irrelevant as has been held in the judgment of Hon'ble the Apex Court in the case of ***Saleem Bhai's case (supra)*.**

The trial Court has observed that the plaintiff instead of filing a suit for specific performance of oral agreement to sell has filed the suit for mandatory injunction to execute the sale deed in favour of the plaintiff after getting the suit land partitioned. The relief for specific performance has been sought in a suit for mandatory injunction only on partition of the land before execution of the sale deed and as such, it is premature. As per Section 16 of the Specific Relief Act, it is mandatory for a person seeking specific performance of an agreement to aver that he has performed his part or he has always been ready and willing to perform the essential terms of the contract. On perusal of plaint, the plaintiffs have no where made such like averments and as such, the suit cannot be treated as suit for specific performance. On perusal of averments made in the plaint, no valuation for the purpose of court fee has been made. Beside the relief of specific performance, the plaintiffs have also sought refund of earnest money of ₹ 1,35,00,000/- and for that, they have paid court fee of ₹ 3,08,100/- on the amount to be recovered. As per Order 7 Rule 11 CPC, the plaintiffs have to give the statement regarding value, jurisdiction and court fee but plaintiffs have not mentioned anything regarding specific performance and the impugned order has been passed by considering the prayer for specific performance.

The second issue that arises for consideration is that when the plaintiffs have sought many prayers in one suit like mandatory injunction, permanent injunction and refund of earnest money, it is to be seen as to whether the Court can reject all the prayers at this stage or not. It is well settled that when one prayer is independent from the other, the whole suit cannot be rejected. In the present case, the Court has passed a conditional order that before rejecting the plaint on the ground of non-payment of ad valorem court fee, one opportunity be granted to pay Court fee on the amount of ₹ 7 crores. Petitioner-plaintiff has sought issuance of direction to respondent No.1 to get the land partitioned and if not, to refund the earnest money and also sought injunction. The relief of mandatory injunction and refund of earnest money are not dependent upon the relief of specific performance. At this stage, it cannot be decided as to whether the plaintiff-petitioner can file suit for specific agreement or not and what would be its consequences. The only issue to be decided at this stage is as to whether the present suit can be considered to be a suit for specific performance in the absence of mandatory ingredients and specific findings/pleadings. It cannot be said at this stage that the present suit is for specific performance and court fee is to be affixed thereupon. Nothing has come on record at this stage as to whether any notice was given by respondent No.1 for termination of contract or not. The sale deed was to be executed only after completion of partition proceedings. All these issues are necessary to be considered before considering the application for affixing court fee but no such finding has been recorded while allowing the application.

In view of the facts and circumstances and the law position as discussed above, I find merit in the contentions raised by learned counsel for the petitioner. Accordingly, the revision petition is allowed and impugned order dated 10.4.2017 passed by the trial Court is hereby set aside.

July 07, 2017 **(DAYA CHAUDHARY)**
poonam **JUDGE**

Whether speaking/reasoned **Yes**

Whether reportable **Yes**