

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

CR No.3401 of 2017

Date of decision: 11.05.2017

Dalbir Singh and another

..Petitioners

Versus

Surjit Singh

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Charanpreet Singh, Advocate
for the petitioners.

Daya Chaudhary, J.

The petitioners have approached this Court by way of filing the present revision petition under Article 227 of the Constitution of India for setting aside impugned order dated 25.04.2017 (Annexure P-1) passed by the Civil Judge (Junior Division), Ludhiana, whereby, the application filed by the defendant-respondent under Order 7 Rule 11 CPC for dismissal of suit on the ground of under valuation of the suit property has been allowed.

Briefly, the facts of the case as made out in the present revision petition are that the petitioners-plaintiffs filed a suit for seeking possession by way of specific performance on the basis of agreement to sell dated 27.09.2013. The petitioners have already paid an amount of ₹3,50,000/- as earnest money to the respondent-defendant, namely, Surjit Singh against total sale consideration of ₹20,50,000/-. An application under Order 7 Rule 11 CPC was filed by the defendant-respondent for rejection of the plaint on the ground that the ad valorem court fee has been paid only on the amount

of earnest money and the plaint is liable to be rejected. Said application was disposed of vide order dated 25.04.2017 with a direction to petitioners-plaintiffs to make good the deficient court fees before the next date of hearing i.e., 11.05.2017.

Learned counsel for the petitioners submits that the claim in the suit is for permanent injunction and accordingly, the fee was affixed. Learned counsel further submits that after valuation of the property in dispute, the court fee has been affixed and while passing the impugned order, the petitioners-plaintiffs have been asked to affix the ad valorem court fee on the total amount of consideration. Learned counsel for the petitioners has also relied upon judgment rendered by this Court in ***Agroha Vikas Trust, Agroha vs. Ram Bilas and others, CR No.6091 of 2008 decided on 03.11.2009***. The relevant portion reads as under: -

“Taking into consideration the totality of the circumstances, it is felt that ends of justice will be adequately met in case the plaintiff- respondent No.1 is permitted to proceed with the case. It is further observed that in case any objection regarding the court fee is raised, the same would be decided, in accordance with law, after framing a necessary issue in this regard. In case, ultimately, it is held that the ad valorem court fee is required to be affixed, it will be open to the trial court to issue a direction to the plaintiff to make good the deficiency of court fee, in accordance with law by deciding the issue of court

fee. Similarly, the plea of limitation will also be adjudicated upon by the trial court on the basis of facts and law. The trial court seems to have rightly not shut the doors of the court for adjudication of the questions, raised by the defendant- petitioner by dismissing the application under Order 7 Rule 11 CPC.”

Heard arguments of learned counsel for the petitioners and have also perused impugned order dated 25.04.2017.

Admittedly, the petitioners filed suit for possession by way of specific performance on the basis of agreement to sell dated 27.09.2013. An amount of ₹3,50,000/- was paid as earnest money to the defendant-respondent, namely, Surjit Singh against total sale consideration of ₹20,50,000/-. The application filed by the defendant-respondent has been disposed of with a direction to the petitioners-plaintiffs to make good the deficient court fees before the next date of hearing i.e., 11.05.2017.

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

When a plaint is presented ordinarily it should be accompanied with the requisite court fees payable thereupon. Section 4 of the Court Fees' Act, 1870 mandates the same in the following terms:-

“4. Fees on documents filed, etc., in High Courts in their extraordinary jurisdiction:- No document of any of the kinds specified in the First or Second Schedule to this Act annexed, as chargeable with

fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction; or in the exercise of its extraordinary original criminal jurisdiction; in their appellate jurisdiction; -- or in the exercise of its jurisdiction as regards appeals from the judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction of the Court) of one or more Judges of the said Court, or of a division Court; or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence; as Courts of reference and revision.- or in the exercise of its jurisdiction as a Court of reference or revision; unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document.”

Undisputedly, non payment of court fee is a dispute between the State and the plaintiff. However, it does not mean that when a plaint is presented with deficit court fee, it is to be rejected outrightly. Section 149 of the Code provides for the Court's power to extend the period and the same is reproduced as under: -

“149. Power to make up deficiency of Court-fees.-
Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the

Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.”

In the suit filed by the petitioners-plaintiffs, the relief has been sought for specific performance and the same is prescribed under Section 7 (x) of the Court Fees Act, which is to be valued at the sale consideration as set out in the agreement.

In the present case, the court fee has been paid on the earnest money only whereas the same has not been paid on total consideration of the value of the suit property.

As per provisions of Section 7(x) of the Court Fees Act, in case of suit for specific performance of agreement to sale, the value of the suit is to be assessed on the basis of sale consideration as set out in the agreement.

The judgment relied upon by learned counsel for the petitioners is not applicable to the facts of the case as the plaintiff in that case has neither claimed possession over the property nor anything has been mentioned about the possession of the property.

Accordingly, I find no reason to interfere with the impugned order and as such, the revision petition is dismissed.

However, in view of provisions of Section 148 CPC, the petitioners are entitled for extension of time for depositing the ad valorem court fee on the total sale consideration so that the suit may not be

dismissed only on this ground that the plaintiffs-petitioners have not affixed the total ad valorem court fee. The trial Court is also directed to give two weeks' time to the plaintiffs-petitioners to deposit the court fee.

11.05.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	✓ Yes/No
Whether Reportable	✓ Yes/No