

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 5271 of 2015 (O&M)

Date of decision: 01.08.2017

Krishna and others

... Petitioners

versus

Naresh and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr. Mohit Garg, Advocate
for the petitioners.

Mr. Manish Sharma, Advocate for
Mr. Amit Khatkar, Advocate
for respondent Nos. 1 & 2.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the order dated 10.07.2015 whereby application of the defendants under order 7 Rule 11 CPC was allowed by the learned trial Court, directing the plaintiffs to pay *ad valorem* court fee, plaintiffs have approached this Court by way of instant civil revision petition under Section 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued and operation of the impugned order was stayed.

It is a matter of record that the plaintiffs/petitioners have filed a suit for possession on the basis of title and for mandatory injunction, directing the defendants to hand over the vacant possession of the suit property after revocation of their licence.

Instant case has been found squarely covered in favour of the petitioners, by the judgment of this court in Harish Chand Vs. Som Nath and others 2013 (I) RCR (Civil) 367. Since present one was not a simple suit for possession, plaintiffs/petitioners were not liable to pay *ad valorem* court fee. However, the learned trial Court by passing the impugned order, committed a serious error of law, which has caused manifest injustice to the petitioners. Having said this, this Court feels no hesitation to conclude that since the impugned order is patently illegal, it cannot be sustained.

The observations made by this Court in para 9 of the judgment in Harish Chand's case (*supra*), which can be gainfully followed in the present case, read as under :

“Plaintiff's version is that defendants were licensees in the suit property under the plaintiff and their license stands terminated. Consequently, the plaintiff is entitled to seek relief of mandatory injunction against the defendants and is, therefor, not required to pay ad valorem Court fee on market value of the suit property, which is payable in a simple suit for possession of the suit property. As regards mesne profits, the plaintiff has not claimed any amount of mesne profits for the period prior to filing of the suit. The plaintiff has claimed mesne profits since the date of filing of suit, for which separate court fee is not payable.”

During the course of hearing, learned counsel for the respondents-defendants could not raise any meaningful argument in support of the impugned order. He could not distinguish the judgment of this Court in Harish Chand's case (supra). Under these facts and circumstances of the case, it can be safely concluded that the learned trial Court fell in serious error of law, while passing the impugned order and same cannot be sustained, for this reason also.

No other arguments are raised.

Considering the above said peculiar facts and circumstances of the case coupled with the reasons afore-mentioned, this Court is of the considered view that since the impugned order has been found patently illegal, it cannot be sustained. Accordingly, order dated 10.07.2015 (Annexure P-2) passed by the learned trial Court is hereby set aside. Learned trial Court is directed to proceed further with the case for its early decision.

Resultantly, with the abovesaid observations made and directions issued, instant revision petition is allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

August 1, 2017

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Whether speaking/non-speaking: Yes/No
Whether reportable : Yes/No