

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

**Civil Revision No.5331 of 2017 (O&M)
Date of Decision:11.08.2017**

M/s T.I.E.R. Infrastructure Pvt. Ltd.

...Petitioner

Versus

Nepal Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Advocate
for the petitioner.

ANIL KSHETARPAL, J.

Defendant is petitioner in this revision petition under Article 227 of the Constitution of India against dismissal of his application under Order 7 Rule 11 of CPC.

Defendant had moved an application to the Court with a prayer that the plaint should be rejected on the ground that ad valorem fee has not been affixed. Learned trial Court after appreciating the arguments of both the sides passed the order which reads as under:

“9. It is to further observe that while adjudicating the application under Order VII rule 11 CPC, only the averments of the plaint are to be seen and they are taken to be correct in their entirety. Now, after perusal of the plaint, coming to the merits of present application, it is to observe that it is the case where the defendant firstly got executed sale deed from the plaintiff by issuing the post dated cheques and got them dishonoured by stopping the

payment and subsequently did not bother to pay even a single penny out of the huge sale consideration of more than Rs.1,00,00,000/- (One Crore only). Now, when the suit has been instituted by the plaintiff for seeking declaration of the said sale deed as null and void, the defendant has moved the present application for rejection of the plaint. However, I am not satisfied with the submissions made by the applicant/defendant in view of the legal position mentioned above. The applicant who himself played fraud with the plaintiff is not entitled to any relief from the Court at this stage. Accordingly, the application in hand under Order VII rule 11 CPC is hereby dismissed being devoid of merit.

10. However, it is made clear that if at the time of passing of the final judgment and decree by the Court, while granting the desired relief, it is found that the plaintiff is liable to pay the ad-valorem Court fee, if at all an appropriate order will be passed, if so required, in accordance with law.”

Counsel for the petitioner has challenged the aforesaid order by filing the present revision petition.

In my opinion, the revision petition is not maintainable at the hands of the defendants. In view of the law laid down by the Hon'ble Supreme Court of India reported as *Rathnavarmaraja Vs. Smt. Vimla*, AIR 1961 SC 1299. In any case, the trial Court has observed that if at the time of passing of final decree, the plaintiff is found liable to pay further

ad valorem Court fee, appropriate order in this regard would be passed.

In such circumstances, I do not find any good ground to interfere in the revisional jurisdiction.

The revision petition is dismissed.

11.08.2017
Parveen Kumar

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No