

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.7719 of 2015 (O&M)

Date of decision: 20.09.2017

Mukhtiar Singh

... Petitioner

Vs.

Ramandeep Kaur

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Harsh Goyal, Advocate
for the petitioner.

Mr. Amaninder Preet, Advocate
for the respondent.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present civil revision petition, under Article 227 of the Constitution of India, is directed against the order dated 14.10.2015 passed by the learned trial Court, whereby application moved by the defendant under Order 7 Rule 11 of the Code of Civil Procedure was allowed and the petitioner-plaintiff was directed to pay the ad-valorem Court fee.

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

Reply filed on behalf of the respondent by way of CM No.19968-CII of 2017 is permitted to be placed on record and CM stands disposed of.

Heard learned counsel for the parties.

It is a matter of record that the plaintiff-petitioner has filed a simple suit for declaration without any consequential relief of possession. Once the plaintiff-petitioner has not prayed for any consequential relief of possession, the learned trial Court exceeded its jurisdiction, while passing the impugned order, directing the plaintiff-petitioner to pay the ad-valorem Court fee. It is so said because the impugned order runs counter to the law laid down by the Hon'ble Supreme Court as well as this Court in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh, 2010 (12) SCC 112, Krishan Kumar Grover Vs. Parmeshri Devi, 1966 (68) PLR 54, Arjan Motors Vs. Girdhara Singh and others, 1978 PLJ 36 and Bharpoor Singh Vs. Lachman Singh, 2017 (1) Law Herald 609**. Having said that, this Court feels no hesitation to conclude that since the impugned order suffers from patent illegality, it cannot be sustained.

It is also not in dispute that even after filing the written statement by the defendant, plaintiff did not seek any amendment in his plaint for addition of any prayer for consequential relief of possession. So far as the issue of delay raised by learned counsel for the respondent-defendant is concerned, this Court is not called upon to decide the same in the present civil revision petition, because that would be the exclusive domain of the learned trial Court at the time of decision of the suit. Under these circumstances, it can be safely concluded that since passing of the impugned order has caused manifest injustice to the plaintiff-petitioner, it cannot be sustained, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering from patent illegality and perversity, it cannot be sustained. Accordingly, the impugned order dated 14.10.2015 passed by the learned trial Court is hereby set aside.

Resultantly, with the abovesaid observations made, present revision petition stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

20.09.2017
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No