

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CRP.No.4154 of 2018

ORDER :

This revision petition itself was taken up for hearing with the consent of both the counsels since the issue involved in this case can be disposed of as the facts lie within a narrow compass.

This revision is filed against order dated 12.04.2018 in IA.No.94 of 2016 in OS.No.122 of 2015. The suit OS.No.122 of 2015 is filed for specific performance of agreement of sale. The amount of sale consideration fixed in the agreement of sale was Rs.2,83,500/-. The plaintiff valued the suit at Rs.2,83,500/- and paid the court fee thereon. An alternative relief of refund of advance of Rs.2,60,000/- with interest was also claimed as per the provisions of the Specific Performance Act. The alternative relief that is made is couched in the following language:

“... to return the advance amount of Rs.2,60,000/- (Rupees Two Lakhs Sixty thousand) with subsequent interest @ 24% per annum from the date of execution of the agreement to sell dated 25.05.2014 to till the date of realization.”

The defendants raised an objection in the written statement that the suit is not properly valued and also filed an application IA.No.94 of 2016 under Section 11 (2) of the Andhra Pradesh Court Fee and Suit Valuation Act, 1956 (for

short 'the Act') to decide the question that the subject matter of the suit is not properly valued and that it should be directed to be valued properly and also to direct the plaint to be presented in a proper Court etc. According to the application, the total value of the suit, if the alternative prayer is valued, would come to Rs.3,54,947/-. According to the petitioner/defendant, if the value of the suit is adopted as Rs.3,54,947/-, the Junior Civil Judges Court will have the jurisdiction.

After hearing both the parties, the impugned order was passed on 12.04.2018 by which the petition was dismissed. Questioning the same, this revision petition is filed.

This Court has heard Sri Ch.Shan Mukha Rao, learned counsel for the petitioners and Sri S. Sridhar, learned counsel for the respondent.

The counsel for the revision petitioners argued that under Section 6(2) of the Act, if more than one relief is claimed in the alternative in any suit, the plaint shall be chargeable with the highest of the fees levied on the reliefs. Therefore, it is the contention of the learned counsel for the petitioners that Section 6 of the Act, would apply and more particularly Section 6 (2) of the Act. It is the contention of the learned counsel that court fee should be paid on the alternative relief along with interest thereon as prayed for.

In reply thereto, learned counsel for the

respondent/plaintiff argues that as per Section 39 of the Act (which is the specific section dealing with suits for specific performance), fee is payable in case of a contract of sale on the amount of consideration only. Therefore, the learned counsel argues that the Court fee paid is correct. He also submits that the alternative prayer will only be awarded when the Court comes to a conclusion that the primary prayer cannot be granted. He also submits that interest may or may not be awarded on the amount claimed and that interest may or may not be awarded from the date of the agreement. According to the learned counsel, the award of interest and the period from which award of interest is to be awarded are matters of discretion of the Court below. Therefore, it is his contention that the specific section dealing with the value of the suit is section 39 of the Act only and that section 6 of the Act does not apply at all to the facts and circumstances of the case. It is his submission that section 6 of the Act, would apply where more than one relief is claimed in the alternative basing on the same cause of action like recovery of possession in a suit for declaration etc. Therefore, in conclusion, he submits that the court fee paid is correct.

This Court, after hearing both the learned counsels, notices that Section 39 of the Act deals with suits for specific performance only. It does not deal with the alternative relief of refund. This is an option which is available to a plaintiff in such a suit. He can sue for specific performance or in the

alternative he can also ask for refund. Once he seeks a relief of refund, this Court is of the opinion that Section 6 of the Act comes into play. Therefore, where more than one claim is made based on the same cause of action and they are sought in the alternative, the plaint has to be charged with the highest fees leviable. Section 6 (2) of the Act is applicable in case an alternative relief is claimed. If the value of the alternative relief is over and above the value of the primary relief, then the fee will have to be paid on the highest of the amounts claimed. This Court is therefore of the opinion that in this case, the Court will have to be paid on the higher amount that is claimed.

In the case on hand, court fee was paid on the primary relief or the value of the agreement only. The alternative relief seeks for a refund of amount of Rs.2,60,000/- with interest of 24% from the date of the execution of the agreement of sale till the realization. This Court is of the opinion that the court fee will have to be paid on the amount of Rs.2,60,000/- with interest at 24% per annum from 25.05.2014 till the date of filing of the plaint.

Accordingly, the impugned order is set aside and the civil revision petition is allowed. If by virtue of this decision, the matter crosses the pecuniary jurisdiction of the Court, then the plaint has to be returned for presentation to a proper Court. If not, after collecting the court fee on the higher of

the two reliefs, the Court may proceed with the trial of the matter. No order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

D.V.S.S.SOMAYAJULU, J

Date: 03.12.2018
KLP

