

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR 161-2015 (O&M)
Date of decision: 13.03.2018

Naib Singh and others

.....Petitioners

versus

Anil Kumar Sharma

.....Respondent

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Mr. Om Pal Sharma, Advocate for the petitioners
None for the respondent

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Impugned in the present revision is the order dated 18.11.2014 (Annexure P-2), passed by learned Civil Judge (Junior Division), Ludhiana, vide which, application filed under Order VII Rule 11 of CPC 1908 by the defendant respondent was allowed and the plaintiff was directed to pay ad valorem Court fee on the relief claimed by him.

Heard.

Plaintiff being owner, entered into an agreement to sell dated 3.12.2007 with the defendant. According to the plaintiff, the defendant did not turn up. Therefore, he filed a suit for declaration that the agreement to sell stood rescinded and the earnest money of Rs.10 lakhs paid by the defendant stands forfeited. Permanent injunction was also sought.

Trial Court has taken a view that it is a case of rescission of the agreement, therefore, ad valorem Court fee on the value of the suit property is liable to be affixed.

I am of the view that it is not a case for rescission of agreement. Claim of the plaintiff is that since defendant did not turn on the date fixed for execution of sale, therefore, in terms of the agreement itself, the same stands rescinded automatically. Therefore, earnest money of Rs.10 lakhs stands forfeited. Prayer of the petitioner is that agreement stands already rescinded and he is entitled to the forfeiture of earnest money. He is not seeking rescission of the agreement by the Court.

It being so, the impugned order directing the plaintiff to pay ad valorem Court fee on the value of the land is patently illegal and is set aside. Revision is accordingly allowed.

After passing of the order, Learned counsel for the respondent has put in appearance and produced order dated 7.11.2017 passed by a Coordinate Bench of this Court in Anil Kumar and others vs. Maninderbir Singh, Civil Revision No.4067 of 2016, stating that similar case has been referred to Larger Bench. I am of the view that since order has already been dictated and pronounced, no order can be passed for adjournment of this case as requested by counsel for respondent.

13.03.2018

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	No