

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

C.R.No.2012 of 2018

Som Nath and Ors.

....Petitioners

Versus

Karam Singh

....Respondent

Date of Order: 22.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Chetan Goel, Advocate for the petitioners.

Ms. Kulwant KK, Advocate for the respondent.

AMIT RAWAL, J (ORAL)

This revision petition is directed against the impugned order dated 07.3.2018 passed by learned Addl. District Judge, Chandigarh whereby the application submitted by the petitioners for rejecting the memorandum of appeal filed against the judgment and decree dated 26.4.2017 passed by Civil Judge(Jr. Division), Chandigarh rejecting the plaint for non-payment of ad valorem court fee, has been dismissed.

Facts of the case are that the respondent-plaintiff instituted the suit (P.1) by challenging two sale deeds dated 20.5.2013 executed by defendant No.1 in favour of defendant No.2 and dated 03.10.2013 executed by defendant No.1 in favour of defendant No.3. In the suit, defendant No.1 filed an application under Order 7 Rule 11 CPC on the premise that defendant No.1 was not an independent person but an agent of the plaintiff/principal and therefore plaintiff cannot take plea of non-payment of court fee being not party to the sale deed. Said application was contested and the trial Court vide order dated 26.4.2017 allowed the application and

rejected the plaint of the plaintiff, the operative part of which reads as under:

“Further, Order 4 Rule 2 contains that every plaint shall comply with the rules contained in Order 6 and 7 of the CPC. Admittedly, in the present case plaint has not complied with the rules contained in Order 7. Further, Order 4 Rule 3 contains that plaint would not be deemed to be duly instituted unless it complies with the requirements specified in rules 1 and 2 of Order 4. In the present case also rules contained in Order 7 have not been complied with. Hence, the plaint shall not be deemed to be duly instituted. In view of the law laid down by Hon'ble Punjab and Haryana High Court in case Sukhpreet (supra) as mentioned above as well as Order 7 Rule 11 (c) and Order 4 Rule 2 and 3, application under Order 7 Rule 11 CPC is hereby allowed and plaint of the plaintiff is hereby rejected. File be consigned to record room.”

Respondent-plaintiff preferred appeal (P.4) by affixing the court fee. Said appeal was objected to by the petitioners on the basis of filing application (P.5) for rejection of the appeal in terms of Order 4 Rule 1 CPC. The impugned order came to be passed on the said application, which is being assailed by the petitioners.

Learned counsel for the petitioners submitted that the appeal was liable to be dismissed as per provisions of Order 4 Rule 1 CPC. He referred to Division Bench judgment of this Court in **M/s Ajay Taxtile and others Vs. The British India Corporation and others, 1970 (2) ILR (Punjab 127)** to contend that the Court is not vested with power to extend time for payment of court fee and in the present case, there was deficiency in court fee. He also relied upon a Full Bench judgment of this Court

reported as **Raj Kumar alias Prithvi Singh Vs. Amar Singh and others, 1981 AIR (Punjab) 1**. Reference is also made to an unreported judgment dated 14.5.2018 passed by this Court in CR No.5864 of 2016 wherein on the identical grounds, the suit was dismissed for want of satisfaction of the ingredients of Order 4 Rule 1 CPC, thus, urged for setting aside of the impugned order.

Per contra, learned counsel for the respondent submitted that the appeal filed against the order rejecting the plaint cannot be treated to be final appeal under Section 96 CPC as it could be a miscellaneous appeal. The trial Court while allowing the application under Order 7 Rule 11 CPC did not grant sufficient time in terms of Chapter 1 Part A Volume 5 of High Court Rules and Orders to make the deficiency in filing court fee good. Moreover, the plaintiffs are willing to pay the ad valorem court fee either in the suit or appeal, in case this Court permits so, for, it was not the fault of the plaintiffs.

I have heard learned counsel for the parties and appraised the paper book.

It would be appropriate to reproduce relevant High Court Rules and Order as also Order 4 Rule 1 CPC, which reads as under:

“11. Court fees.- No petition, memorandum of appeal or other document, which ought to bear a stamp under the Court Fees Act, 1870, shall be received in the Court until it is properly stamped.

13. Improperly stamped document remains invalid unless filed through mistake and time extended for making up deficiency.- Attention is drawn to the provisions of sections 4 and 28 of the Court Fees Act and it must be understood in connection with section 5 of the Indian Limitation Act that an improperly

stamped document even though received, filed or used in the Court remains invalid, unless it is proved to the satisfaction of the Court that it was so filed or used through mistake or inadvertence, and time is extended for making up the deficiency in the Court fees.”

Order 4 Rule 1 CPC

“ Suit to be commenced by plaint.- (1) Every suit shall be instituted by presenting a plaint in duplicate to the court or such officer as it appoints in this behalf.

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2).”

On conjoint reading of the aforesaid provisions as also order dated 26.4.2017 whereby the plaint was rejected for want of court fee, it is evident that the court below did not grant time to the plaintiff for paying ad valorem court fee. In such circumstances, provisions of Order 4 Rule 1& 2 CPC should not have been pressed into, for, it is the duty of the court to grant time. This view of mine is derived from the judgment rendered by Hon'ble Supreme Court in Jang Singh Vs. Brij Lal and others, AIR 1966 SC 1631 wherein while applying the maxim “Actus curiae neminem gravabit”, wherein it has been held that in case a person is harmed by a mistake of the Court, the same can always be corrected. For the sake of brevity, para 6 of this judgment reads as under:

“ The facts of the case almost speak for themselves. A search was made for the application on which the order of the Court directing a deposit of Rs. 4950 was said to be passed. That application remained untraced though the

District Judge adjourned the case more than once. It is, however, quite clear that the challan was prepared under the Court's direction and the duplicate challan prepared by the Court as well as the one presented to the Bank have been produced in this case and they show the lesser amount. This challan is admittedly prepared by the Execution Clerk and it is also an admitted fact that Jang Singh is an illiterate person. The Execution Clerk has deposed to the procedure which is usually followed and he has pointed out that first there is a report by the Ahmed about the amount in deposit and then an order is made by the Court on the application before the challan is prepared. It is, therefore, quite clear that if there was an error the Court and its officers largely contributed to it. It is no doubt true that a litigant must be vigilant and take care but where a litigant goes to Court and asks for the assistance of the Court so that his obligation-, under a decree might be fulfilled by him strictly, it is incumbent on the Court, if it does not leave the litigant to his own devices, to ensure that the correct information is furnished. If the Court in supplying the information makes a mistake the responsibility of the litigant, though it does not altogether cease, is at least shared by the Court. If the litigant acts on the faith of that information the Courts cannot hold him responsible for a mistake which it itself caused. There is no higher principle for the guidance of the Court than the one that no act of Courts should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim: "Actus curiae neminem gravabit".

I am afraid that the argument of learned counsel for the respondent for treating the appeal as miscellaneous appeal has no merit, for, vide decision dated 14.12.2015 (P.8) in CR No.8122 of 2015, it has already been held by this Court that the appeal filed against the rejection of the

plaint would be main appeal and treated to be filed under Section 96 CPC.

The operative part of the said judgment reads as under:

“I am of the view that the revision petition is liable to be dismissed on the following reasons:-

Division Bench of Madhya Pradesh High Court in M.G.Tipnis' case (supra) in paragraph 6 of the judgment by relying upon the observations made in Subarna Rekha Versus Ramkrishna Devo, AIR 1968 Andhra Pradesh 239 held that subject matter of the appeal would not be different in case the appeal against the order of rejection of plaint under Rule 11(a) or Rule 11(d) of Order 7 CPC has been filed. It is the relief in the suit and as well as in the appeal which has to be seen. The rejection of the plaint would not be having effect of a decree and the remand of the suit for trial on merits for the purpose of granting the reliefs cannot be claimed in the plaint. The court fees payable in this case would be governed by Schedule 1 of Article 1 of the Act, i.e., ad valorem of the subject matter of the dispute and not fixed one. Even the Rajasthan High Court in Dharam Chand Versus Punam Chand, 1952(2) ILR (Rajasthan) 195 has culled out the same ratio decidendi.

The Hon'ble Delhi High Court in M/s. Sehgal Industrial Works Versus M/s.Tru-Temp Industries & Ors., 1986(11) DRJ 71 has also held that it would be an appeal under Section 96 of the CPC and not a misc.appeal. The Full Bench of Andhra Pradesh High Court in Molugu Ram Reddy's case (supra), after discussing the judgment of the Hon'ble Supreme Court and various other Courts, held that the appeal would be under Section 96 and not under Order 43 Rule 1 CPC. In fact, it is barred in law.

There is another aspect of the matter.

The petitioner-plaintiff would be entitled to seek refund of the court fees, purported to have been filed while filing of the suit by invoking provisions of Section 13 of the Limitation Act.

I am of the view that the impugned order calling upon the petitioner-plaintiff to pay ad valorem court fees on the subject matter of the appeal treating it to be subject matter of the suit does not suffer from any illegality and perversity, much less cannot be said to be without jurisdiction.

Mr.Roopak Bansal submits that the time granted by the Lower Appellate Court for payment of the court fees has expired. He

submits that his client would not averse in case reasonable time is granted for payment of court fees. In case any court fees is paid within one month, the Lower Appellate Court shall decide the appeal in accordance with law. Revision petition stands dismissed.

Revision petition stands dismissed.”

The Full Bench of this Court have reiterated the view of the Division Bench laying down that where memorandum of appeal is deficient for court fee, the party availing remedy cannot be granted time for payment of ad valorem court fee either on the direction of the court or objection by the opposite party. Para 15 & 16 of the Full Bench judgment passed in **Raj Kumar's case (supra)** reads as under:

“15. I am, therefore, of the view that not even one out of the many considerations which can possibly impel one to take a view contrary to a long line of unbroken precedent is satisfied in this context. Therefore, following the settled law within this jurisdiction we would answer the question posed at the very outset of this judgment in the negative and hold that sub-rule (c) of Rule 11 of Order 17 Civil Procedure code, is not attracted in the case of the memoranda of appeal.

16. Before parting with this judgment it seems necessary to dispel the doubt that there is any conflict of view in the Division Bench judgments of this Court in Gurdial Singh v. Massa Singh and others (supra) and Jobar Singh v. Shadi (supra). In Gurdial Singh's case (supra) the Division Bench had virtually adopted the exhaustive referring order and made it an integral part of the judgment with regard to the question posed before it. The question therein was primarily and squarely with regard to the scope and applicability of Sections 148 and 149 of the Civil

Procedure Code. An analysis of the judgment would show that in the reference order virtually the whole discussion was centred around the provisions of the said Sections and the judgments with regard thereto. However, it was noticed that the matter could also be examined from another angle and it was observed that a number of High Courts (as is evident from the earlier discussion here) were of the view that Order 7, Rule 11 (c) of the Civil Procedure Code was also applicable to the memoranda of appeals. In the referring order it was noticed in categorical terms that the view of the Lahore High Court as also of the Allahabad and Madras High Courts was to the contrary. Because the point was not directly in issue counsel did not cite at that stage the Division Bench judgment of this court in M/s Ajay Textile and others' case (supra) and it was, therefore, observed that no decision of our own Court had been brought to notice. Since this issue was totally an ancillary one in Gurdial Singh's case, all the authorities were not cited and, therefore, the passing observation therein that the weight of authority was in favour of applying Order 7, Rule 11 (c) to the appellate forum does not appear to represent the true position now. It was in that situation that it was observed in the reference order that if the Bombay and Patna views were to hold the field then the preliminary objection of allowing the deficiency of court fee on the memoranda of appeals to be made up would be wholly devoid of merit. It is obvious that sitting singly a view contrary to the Division Bench of the Lahore High Court could not be taken and since the observations were made in the order of reference the same were only done to present the case from all its angles for consideration by a larger Bench. Now a

reference to the Division Bench judgment in Gurdial Singh's case would show that it did not at all advert to the question of the applicability or otherwise of Order 7, Rule 11 (c) to the memoranda of appeals. There is indeed not a word of reference to it either expressly or implicitly. The Bench confined itself exclusively to Section 149 of the 'Civil Procedure Code and overruled the earlier Single Bench judgments of the Lahore High Court and of our own Court on this point. That being so, it would be more than manifest that there is no conflict or divergence of opinion in the observations made in the Division Bench judgment of Gurdial Singh's case and that of the Division Bench judgment in Jabar Singh's case (supra)."

Reliance has also been made to the judgment of Hon'ble Supreme Court reported as **A. Nawab John v. V.N. Subramaniam, (2012) 7 SCC 738** wherein while interpreting the provisions of Sections 149 and 115 read with Order 7 Rule 11 CPC, it has been held that the jurisdiction vested under Section 149 CPC is discretionary in nature.

Although there is no dispute to the aforesaid judgment but in the present case, the trial Court did not adhere to the High Court Rules and Regulations for making up deficiency in court fee.

At this stage, learned counsel for the petitioner submitted that the trial Court did not grant time to the plaintiff, for, order passed under Order 7 Rule 11 CPC came to be passed by testing the bonafide of the plaintiff as the court fee was not paid intentionally and therefore the payment of the court fee would relate back to filing of the suit as the suit would be barred by law of limitation.

I am afraid that the said argument is not sustainable, for, the

sale deed challenged in the said suit was of 2013 whereas the suit had been filed in 2015 and in the meantime, the focus of the court was drawn on the adjudication of the application submitted by the petitioner-defendant No.1 qua rejection of the plaint. I would be refraining myself from commenting anything upon the import of order dated 26.4.2017 as it is domain of the Appellate Court.

From the facts aforesaid, in my view, it would be in the fitness of things to exercise jurisdiction under Section 149 CPC by granting one effective opportunity for a period of 15 days from the receipt of certified copy of the order to make up the deficiency in court fee before the lower Appellate Court to the respondent-plaintiff, failing which the memorandum of appeal shall be deemed to have been rejected. Ordered accordingly.

Disposed of.

May 22, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No