

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.3406 of 2013
Date of Decision: April 05, 2018

Raj Kishan

...Petitioner

Versus

Kahan Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Abhimanyu Bajaj, Advocate for
Mr.Saurabh Bajaj, Advocate,
for the petitioner.

Mr.R.S.Mamli, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

The present revision is directed against the impugned order, whereby the petitioner-plaintiff has been directed to pay *ad valorem* court fees on the market value of the disputed property, in a suit seeking possession by way of mandatory injunction filed against the respondent-defendant for revocation of the licence.

Mr.Abhimanyu Bajaj, learned counsel appearing on behalf of the petitioner-plaintiff submitted that there is a categorical pleading in Para 9 of the plaint that the licence of the defendant, who was given the permission to live in the premises, was revoked a month back and thereafter the suit was filed. In support of his contention, relied upon the ratio decidendi culled out in **Th.Milka Singh and others Vs. Th.Diana and others, AIR**

1964 J&K 99 to contend that in case the suit for mandatory injunction for

revocation of the licence is filed, the plaintiff is not required to pay the *ad valorem* court fees as the suit had been filed after a gap of one year or so. Ofcourse, the rigors of the Court fees Act would come into play, therefore, the impugned order calling upon the petitioner-plaintiff to pay the *ad valorem* court fees is not sustainable in law.

Per contra, Mr.R.S.Mamli, learned counsel for the respondent-defendant submitted that there is no illegality or perversity in the impugned order. Under the garb of mandatory injunction, the petitioner-plaintiff is seeking possession of the property and it basically tantamounts to seeking possession where court fees as per Section 7 (v) of the Court Fees Act, *ibid*, is required to be paid. The impugned order is justified in law and, thus, prayed for dismissal of the revision petition.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of the learned counsel for the petitioner-plaintiff.

Para 9 of the plaint reads thus:-

“9. That the plaintiff has already revoked the licence which was initially granted in favour of the defendant allowing him to enjoy the possession of the house shown in red colour in the attached site plan.”

The suit for mandatory injunction for seeking eviction or possession from a licensee is filed as per the provisions of Section 39 of the Specific Relief Act, when on revocation, the obligation on the defendant is breached. In the instant case, there is a categoric pleading in Para, *ibid*, that the licence was revoked and the suit was filed in 2010. It is not the case of the defendant that revocation was done more than a year back and, therefore, the court fees is liable to be paid in view of the mandate of the

judgment relied upon.

It is settled law that the court fees is required to be paid in a suit seeking possession by way of mandatory injunction in case of revocation and the suit is filed after a gap of one year. The aforementioned view of mine is derived from the ratio decidendi culled out in **Sant Lal Jain Versus Avtar Singh**, 1985 AIR Supreme Court 857. However, the present case does not fall within the aforementioned parameters.

Resultantly, the findings of the trial Court calling upon the petitioner-plaintiff to pay the *ad valorem* court fees is not sustainable in the eyes of law and hereby set-aside.

Revision petition stands allowed.

April 05, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No