

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) Civil Revision No.723 of 2017 (O&M)
Date of Order:16.01.2018

Pritam Kaur

..Petitioner

Versus

Puneeta Sharma and another

..Respondents

(2) Civil Revision No.727 of 2017 (O&M)

Pritam Kaur

..Petitioner

Versus

Puneeta Sharma and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jaswinder Singh, Advocate,
for the petitioner.

Mr. Akshay Bhan, Sr. Advocate, with
Mr. Namit Gautam, Advocate,
for respondent no.1.

Mr. Manbir Singh Batta, Advocate,
for respondent no.2.

ANIL KSHETARPAL, J.

By this order, Civil Revision Nos.723 and 727 of 2017 shall stand disposed of.

In the first revision, challenge is to the order dated 19.11.2015, directing the plaintiff to affix the ad-valorem court fee on the plaint, whereas in the second revision petition, challenge is to the order, dismissing application for re-calling of order dated 19.11.2015.

Plaintiff initially filed a suit for permanent injunction on 27.03.2006. When the case was at initial stage, application was moved for

amendment of the plaint so as to add the relief of specific performance of the agreement to sell, which was allowed. Plaintiff filed amended plaint and in paragraph 15 of the amended plaint, plaintiff stated as under:-

“15. The value of the suit for the purposes of court fees and jurisdiction on the relief of mandatory injunction and permanent injunction is Rs.130/- each on which a court fee of Rs.13/- each is payable and thus, a total court fee of Rs.26/- has been paid on the plaint. The value of the suit for the purposes of court fee and jurisdiction on the relief of specific performance is assessed at Rs.17,00,000/- on which a court fee of Rs.18936/- has been paid on the plaint.”

Written statement to the amended plaint was filed. In paragraph 1 of the preliminary objections, defendants stated as under:-

“1. That suit of the plaintiff is not maintainable in the present form, and has been framed in a manner so to avoid payment of court fee, and accordingly plaint is liable to be rejected.”

Thereafter, issues were framed on 07.02.2014 and the plaintiff led his evidence. At that stage, defendant no.1 filed an application dated 03.11.2015, for rejection of the plaint. It has been asserted in the plaint that Court fee has been paid, however, perusal of the original file shows that the court fee has not been affixed.

Notice of the application was given to the plaintiff. Plaintiff admitted the inadvertent mistake and offered to pay the court fee. Taking into consideration the stand of the plaintiff, the Court passed the impugned

order dated 19.11.2015, directing the plaintiff to affix the court fee. It is not in dispute that appropriate court fee has already been affixed.

In the second revision, defendant-petitioner has challenged the order dated 08.07.2016, rejecting the application to re-call order dated 19.11.2015.

I have heard counsel for the parties at length and with their able assistance gone through the documents filed.

Learned counsel for the petitioner has submitted that the plaint as filed was not a valid plaint and since necessary court fee had not been affixed, therefore, the plaint cannot be deemed to be valid plaint in the eyes of law. He has further submitted that the plaintiff could not be permitted to affix the Court fee after a period of almost 9 years.

On the other hand, learned counsel for the respondent-plaintiff has submitted that there was a bonafide mistake as in the amended plaint the plaintiff had specifically mentioned that the ad-valorem court fee as required has been affixed, however, due to inadvertent mistake, the court fee was not attached. Learned counsel for the respondent further submitted that this mistake did not come to the notice either of the plaintiff or of the court or of the defendant. He further submitted that the moment the mistake was pointed out, plaintiff offered to pay and in fact the court fee has already been affixed.

In the considered opinion of this Court, arguments of learned counsel for the petitioner does not have any substance. A properly instituted suit through a plaint cannot be held to be invalid on the ground that proper court fee has not been affixed. The plaint as filed was a valid plaint but for deficiency in the payment of court fee. Section 149 of the Code of Civil

Procedure gives discretion to the Court to allow the person, by whom such court fee is payable, to pay the whole or part of such court fee. Section 149 of the Code of Civil Procedure is extracted as under:-

“149. Power to make up deficiency of court-fees—

Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.”

Facts of the case clearly reveal that there was an inadvertent error on the part of counsel for the plaintiff who had specifically plead that the court fee has been affixed, however, actually the court fee was not affixed. This fact did not come to the notice of the parties or even of the Court during all this time. In such circumstances, the Court directed the plaintiff to make up the deficiency in the court fee which was duly complied with. Therefore, it is not possible to conclude that the plaint as filed was not a valid plaint.

Second argument of learned counsel that the court could not have exercised discretion after such a long time, is to be noticed and rejected. Section 149 of the Code of Civil Procedure provides that the court may, at any stage, allow the person to make up the deficiency in the payment of court fee. Section 149 of the Code of Civil Procedure does not

circumscribe the power of the Court to allow the party to make up the deficiency in the payment of court fee.

In view of the discussion made hereinabove, there is no ground to interfere with the orders dated 19.11.2015 and 08.07.2016. Hence, both the revision petitions are dismissed.

January 16, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No