

116 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.7852 of 2018
Date of Decision: 19.11.2018

Shinderpal Kaur Atwal

... Petitioner

Vs.

Shakuntla Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. G.S. Nagra Advocate
for the petitioner.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 12.10.2018 passed by the Civil Judge (Junior Division), Rupnagar, through which an application filed by the petitioner under Order 7 Rule 11 CPC has been dismissed.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that in October, 2014, respondent No.1 filed a suit against the petitioner and respondent Nos.2 and 3 seeking therein possession by way of partition of land detailed and described in the head note of the plaint (for short the suit-property). Upon notice, the petitioner/defendant No.1 appeared before the Trial Court and filed her written statement opposing the claim set up by respondent No.1. The Trial Court framed issues after which respondent No.1 led her entire evidence. Thereafter, during the course of leading her evidence, the petitioner/defendant No.1 filed an application under Order 7 Rule 11 CPC seeking rejection of respondent No.1/plaintiff's plaint for having not affixed

proper court fee. Such application has been dismissed by the Trial Court, occasioning the filing of the present petition.

Learned counsel for the petitioner has been heard.

A perusal of the order challenged in the present proceedings reveals that the Trial Court dismissed the petitioner's application under Order 7 Rule 11 CPC on the ground that the objection regarding deficiency of court fee should have been taken by her at the time of filing her written statement; admittedly the son of respondent No.1/plaintiff while appearing as a witness had deposed that the plaintiff was not in possession of the suit property; the suit was at an advanced stage as petitioner/defendant's evidence was being led and that respondent No.1/plaintiff could always be directed to make good the deficiency in court fee, if any, at the time of final arguments.

The above findings returned by the Trial Court in the impugned order have been considered and no interference in the same is warranted especially in view of the observations by the Trial Court that the suit was at an advanced stage and respondent No.1 could always be directed to make good the deficiency in court fee, if any, at the time of final adjudication of the suit.

Dismissed.

19.11.2018
rekha sharma

(DEEPAK SIBAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No