

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

Civil Revision No.8087 of 2017 (O&M)

Date of decision: May 29, 2018

Kamlesh Kaur and another

...Petitioners

Versus

Ravinder Sharma alias Ravinder Kumar Sharma

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Fateh Saini, Advocate
for the petitioners.

Mr.B.R.Rana, Advocate
for the respondent.

INDERJIT SINGH, J.

Petitioners Kamlesh Kaur and Manpreet Kaur have filed this revision petition against respondent Ravinder Sharma alias Ravinder Kumar Sharma under Article 227 of the Constitution of India for setting aside the order dated 26.07.2017 passed by learned Civil Judge (Junior Division), Ambala, whereby the petitioners were directed to affix *ad valorem* Court fee on the counter claim.

Notice of motion was issued. Learned counsel for respondent appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that, plaintiff-respondent Ravinder

Sharma alias Ravinder Kumar Sharma filed a suit against defendants-petitioners for possession by way of specific performance of agreement to sell dated 11.05.2009 and 20.07.2009 and property measuring 44 sq. yards as described in the head note of the plaint, with consequential relief of restraining the defendants from selling, mortgaging, alienating the suit property to any third person on the basis of oral as well as documentary evidence under Order 7 Rule 1 CPC.

The defendants-petitioners filed counter claim/written statement by stating that possession of plaintiff over the suit property is purely as licensee. The defendants have paid proper prescribed court fee qua the relief which they have sought in their counter claim. The defendants have claimed possession after termination of licence of plaintiff and for mesne profit for which *ad valorem* Court fee is ₹25/-. It is further stated that defendants have not claimed any right from alleged sale agreement.

The plaintiff-respondent filed the application for dismissing the counter claim of the defendants for non payment of proper Court fee.

Learned Civil Judge (Jr. Divn.) Ambala, vide order dated 26.07.2017 directed the defendants to affix *ad valorem* Court fee and the application of the plaintiff was allowed.

Aggrieved from the above-said order, present revision petition has been filed.

From the perusal of the evidence on record, I find that the impugned order dated 26.07.2017 passed by learned Civil Judge (Jr. Divn.), Ambala, is not as per law. The defendants-petitioners are only asking for

mandatory injunction to get vacated the shops from the plaintiff as the

plaintiff is the licensee and licence has been terminated by the defendants.

Learned counsel for the petitioners-defendants cited judgment passed by this Court in ***Harish Chand vs. Som Nath and others, 2013(1) RCR (Civil) 367***, in which, the defendant occupied the property of plaintiff as licensee and plaintiff terminated their licence and filed suit for possession by mandatory injunction by alleging that defendants were licensees under the plaintiff and their licence stood terminated and it is held that no *ad valorem* Court fee is payable on the market value of property. On the same point, reliance has been placed upon the judgment passed by this Court in ***Sohan Singh vs. Piara Singh, 2000(3) RCR (Civil) 149***, in which it is held that in a suit for mandatory injunction against licensee, it is not necessary on the part of licensor to file a regular suit for possession by paying court fee on market value of property and a decree for mandatory injunction can always be passed against a licensee whose possession is permissive. Learned counsel for the petitioners also cited judgment passed by ***Hon'ble Madhya Pradesh High Court (Jabalpur Bench) in Abdul Hussain and others vs. Mansoor Ali and others, 2009(39) RCR (Civil) 866***, in which, revocation of licence of the defendants by plaintiff on 02.04.2007 with effect from 30.04.2007 and suit for mandatory injunction to hand over possession was filed on 19.05.2007 and where the suit for injunction is filed diligently, it is held that Court fee would be payable under Section 7(iv) (d) only for injunction, not for possession. All the above-cited judgments fully apply to the facts of the present case.

In view the above law cited by learned counsel for the petitioners, I find that the impugned order dated 26.07.2017 passed by learned Civil Judge (Jr. Divn.), Ambala, is not as per law and the same is set

aside. The application filed by the plaintiff-respondent stands dismissed.

Therefore, finding merit in the present petition, the same is
allowed

May 29, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No