

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

CR No.8780 of 2017 (O&M)

Date of decision:16.02.2018

Management Committee Gurudwara
Sri Guru Teg Bhadaur Patshahi Nauvi Maur Kalan

... Petitioner

Vs.

Gurcharan Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. A.P.Kaushal, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

The petitioner-defendant is aggrieved of the impugned order dated 18.02.2017, vide which the application filed under Order 7 Rule 11 of Code of Civil Procedure for rejection of the plaint due to non-payment of court fee, has been dismissed.

Mr. A.P.Kaushal, learned counsel for the petitioner submitted that possession is not of suit land which is subjected to land revenue but with regard to building, therefore, ad valorem court fee is required to be paid. This fact has not been noticed by the trial Court, thus, there is illegality and perversity in the order under challenge.

I have heard the learned counsel for the petitioner-defendant and appraised the paper book.

It is settled law that for adjudication of the application filed under Order 7 Rule 11 CPC, the averments made in the plaint have to be seen. On going through the averments made in the plaint (Annexure P-4), it is evident that defendant has not taken a stand with regard to constructed portion. It would be open for the petitioner-defendant to bring all the facts during the trial of the suit, in case some evidence with regard to constructed portion comes on record.

As regards maintainability of the suit by Mahant, petitioner-defendant shall also be at liberty to press for framing of issue qua maintainability, in accordance with law.

While upholding the order under challenge, revision petition stands disposed of.

(AMIT RAWAL)
JUDGE

February 16, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No