IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No. 848 of 2019 (O&M)

DATE OF DECISION : December 5th, 2019

Shiv Darshan Lal Passi

.... PETITIONER(S)

VERSUS

Vinod Kumar

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. A.S. Khinda, Advocate, for the petitioner.
Ms. Bhavna Kapur, Advocate, for the respondent.

...

Sanjay Kumar, J.

CM-23390-CII/2019

This miscellaneous application is ordered and the Agreement to Sell dated 22.07.2016 is taken on record as Annexure P-5.

Civil Revision No. 848 of 2019

By order dated 05.11.2018, the Court of the learned Civil Judge (Senior Division), Kapurthala (hereinafter, 'the trial Court'), directed the plaintiff in the suit, CS-426-2017, to pay *ad valorem* Court Fee as per rules. Aggrieved thereby, the plaintiff is before this Court by way of this civil revision.

Parties shall hereinafter be referred to as arrayed in the suit.

CS-426-2017 was filed by the plaintiff with the following prayers:-

> *'Suit for declaration to the effect that the agreement to sell dated 22.7.2016 executed by the plaintiff in favour of defendant with respect to Kothi No. 14 double storey, which is constructed over an area measuring 9 Marla comprised in khewat/khatauni no. 625/1043 khasra no. 8137/6775/6236/4899/2/0-9 situated in Germany Dass Park Kapurthala which is bounded as under*
> *East : 32 ft / passage 25 ft wide*
> *West : 32 ft / plot no.15*
> *North : 50 ft / passage 20 ft wide*
> *South : 50 ft / Plot no.13*
> *is deemed to have been cancelled for non payment of the part of the contract by defendant and earnest money paid under the said agreement stand forfeited and the plaintiff is not bound by the terms thereof in any manner whatsoever*
> *AND*
> *Suit for permanent injunction restraining the defendant from claiming any right over the suit property on the basis of the aforesaid agreement to sell in any manner whatsoever and forever,'*

While so, the defendant in the suit filed an application under Order 7 Rule 11 CPC to reject the plaint on the ground that proper Court Fee had not been paid by the plaintiff. It was his contention that the sale consideration fixed under the subject agreement was Rs.69,21,000/- and therefore, the plaintiff was liable to pay *ad valorem* Court Fee thereon to the tune of Rs.1,60,072-50. Contesting this plea, the plaintiff asserted that he had only sought declaratory relief with regard to cancellation of the subject agreement and that he would not be liable to pay *ad valorem* Court Fee.

Upon considering the rival contentions, the trial Court opined that as per Section 7(iv)(c) of the Court-Fees Act, 1870 (hereinafter, 'the Act of 1870'), the plaintiff was liable to pay *ad valorem* Court Fee. To enable the plaintiff to do so, the trial Court adjourned the matter.

By order dated 05.02.2019 passed in this revision, this Court directed the trial Court not to insist upon payment of *ad valorem* Court Fee to proceed with the suit.

Perusal of the suit agreement dated 22.07.2016 (Annexure P-5) reflects that the plaintiff, being the owner of Kothi No.14 situated at Kapurthala, stated that he was in dire need of money and agreed to sell the said Kothi to the defendant for a total consideration of Rs.69,21,000/-. He acknowledged receipt of Rs.20,00,000/- as earnest money. The agreement further recorded that the sale deed should be executed by 22.11.2016 but in case the plaintiff failed to execute the sale deed within the stipulated period, he should give double the amount of earnest money to the defendant and in case the defendant failed to get the sale deed executed within the stipulated period, by giving the remaining amount, then the earnest money received by the plaintiff would stand forfeited and the agreement would stand cancelled. It is on the strength of the aforestated last referred statement recorded in the agreement that the plaintiff seeks a declaration to the effect that the suit agreement dated 22.07.2016 is deemed to have been cancelled for non-payment of the balance sale consideration by the defendant within the time stipulated. It may also be noted that apart from the aforestated declaratory relief, the plaintiff also sought a permanent injunction restraining the defendant from claiming any right over the suit property on the strength of the suit agreement dated 22.07.2016.

Section 7(iv)(c) of the Act of 1870 deals with computation of the Court Fee payable in suits for declaratory decrees along with consequential relief. It states to the effect that in a suit filed for obtaining a declaratory decree or order where consequential relief is prayed for, the plaintiff shall state the amount at which he values the relief sought and pay Court Fee thereon. The plaintiff would seek to bring the suit on hand within the ambit of the above clause, thereby claiming unto himself the right to value the relief sought by him and accordingly pay Court Fee thereon. Be it noted that he valued the declaration sought by him at Rs.500/- and the permanent injunction sought by him at Rs.500/- and paid, in all, Court Fee of Rs.100/- .

Mr. A.S. Khinda, learned counsel for the petitioner, would contend that the agreement to sell dated 22.07.2016 contained a clause, whereby the said agreement automatically stood cancelled upon a certain event coming to pass and therefore, the plaintiff was entitled to seek a mere declaration to that effect. He would further submit that as the defendant could attempt to assert rights under the said agreement despite its deemed cancellation, the consequential relief of permanent injunction had been sought. Learned counsel would therefore assert that the case squarely falls within the ambit of Section 7(iv)(c) of the Act of 1870.

On the other hand, Ms. Bhavna Kapur, learned counsel for the respondent, would argue that accepting the plea of the plaintiff that an agreement of sale relating to immovable property can automatically stand cancelled would mean that such cancellation could be claimed unilaterally by one of the parties thereto and the question of suing for specific performance of such agreement by the other party would never arise at all. She would further inform this Court that the defendant independently filed a civil suit in CS-227-2017 seeking specific performance of the very same agreement to sell dated 22.07.2016 and therefore, the plaintiff could not unilaterally assume that the said agreement stood cancelled.

Both the learned counsel relied on a plethora of case law in support of their respective contentions.

It is well settled that for the purpose of assessing the correct Court Fee payable in a suit, the Court has to ascertain as to what is the real relief claimed therein. Intelligent or artful wording of the prayers notwithstanding, it would be for the Court to verify as to what is/are the actual suit claim(s) for the purpose of suit valuation and determination of the Court Fee payable thereon. Mere astuteness in drafting the plaint will not be allowed to stand in the way of the Court looking at the substance of the relief asked for [See the Full Bench decision of this Court in **Niranjan Kaur V/s. Nirbigan Kaur {1981 PLJ 423 : 1981 AIR (Punjab) 368}**].

Prima facie, this Court is inclined to agree with Ms. Bhavna Kapur, learned counsel, that the plaintiff is, in essence, seeking cancellation of the suit agreement to sell [See **Jaswinder Singh V/s. Om Prakash {2011 (3) Law Herald 2100 : 2011 (53) RCR (Civil) 851}**, **Niranjan Kaur** (*supra*) and the decision of the Supreme Court in **Suhrid Singh @ Sardool Singh V/s. Randhir Singh and others {2010 (2) RCR (Civil) 564 : 2010 (2) RAJ 436}**]. Quibbling over the phraseology used in the suit prayer aside, the thrust thereof is to declare that the suit agreement stands cancelled. This cancellation, according to the plaintiff, happened automatically as the defendant failed to pay the balance sale consideration and obtain the sale deed within the stipulated period. Trite to state, time is ordinarily not of essence in contracts relating to immovable property. Cases that constitute the exception to this rule would be treated otherwise on the strength of stringent contractual conditions which clearly manifest that time is made the essence of that contract. A mere recital to the effect that the vendor is in dire need of money is not sufficient, in itself, to infer that time has been made the essence of the contract. Further, the default clauses in the suit agreement to sell dated 22.07.2016 clearly show that they were stipulated to address both situations - (i) where the plaintiff was at fault in not completing the transaction within time and (ii) where the fault lay with the defendant. Therefore, the suit agreement to sell cannot be treated as a contract wherein time was of essence. In any event, this aspect of the matter pales into insignificance insofar as payment of Court Fee by the plaintiff, as claimed by him, is concerned. Significantly, the Act of 1870 was amended by the Court Fees (Punjab Amendment) Act, 1953, whereby a second *proviso* was added to Section 7 (iv)(c) thereof. This *proviso* reads as under:-

> *'Provided further that in suits coming under sub-clause (c), in cases where the relief sought is with reference to any property such valuation shall not be less than the value of property calculated in the manner provided for by clause (v) of this section.'*

Section 7(v) of the Act of 1870 deals with payment of Court Fee in suits for possession of land, houses and gardens, and the Court Fee payable in such suits is linked to the annual revenue payable to the government or the net profits arising from the land or the market value of the land, as the case may be.

In the light of the insertion of the aforestated *proviso* to Section 7(iv)(c) of the Act of 1870 in so far as it applies to the State of Punjab, it is not open to any plaintiff to value the relief sought by him in such a suit without reference to the provisions of Section 7(v) of the Act of 1870 and value the suit claim therein as he chooses. Be it noted that in the case on hand, the plaintiff paid a paltry Rs.100/- towards Court Fee by valuing his suit claims at just Rs.1,000/-.

In that view of the matter, the trial Court was perfectly justified in directing the plaintiff to pay *ad valorem* Court Fee. The order under revision therefore does not brook interference either on facts or in law.

The Civil Revision is devoid of merit and is accordingly dismissed.

Interim order dated 05.02.2019 shall stand vacated.

There shall be no order as to costs.

December 5th, 2019 (Sanjay Kumar)
Kang Judge

Whether speaking/reasoned	Yes
Whether reportable	Yes