

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

Sr. No.117

CR-3905-2019

Date of decision: 01.07.2019

Shalender Kumar and another

....Petitioners

versus

Umesh Kumar Mittal and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Anmol Verma, Advocate
for the petitioners.

* * *

DEEPAK SIBAL, J. (Oral)

Respondents No.1 and 2 filed a suit before the Additional Civil Judge (Senior Division), Ambala (for short – the Trial Court) seeking therein specific performance of agreement to sell dated 19.08.2010 in respect of House No.1658/B-11, Mahavir Nagar, Ambala City (for short – the suit property). A decree of permanent injunction to restrain the petitioners (defendants No.1 and 2 in the suit) from alienating, mortgaging, transferring etc. the suit property to any other person except respondents No.1 and 2/plaintiffs and from changing the nature of the suit property was also sought. On being put to notice, the petitioners contested the suit. On 03.10.2015, the Trial Court decreed respondents No.1 and 2's suit and accordingly, on the payment of the balance sale consideration, they were held entitled to possession of the suit property. Through an appeal filed by the petitioners before the Additional District Judge, Ambala (for short – the Appellate Court) they challenged the aforesaid decree dated 03.10.2015.

However, in their appeal, no court fee was affixed by them. Instead an

application was filed by them seeking permission to file the appeal as indigent persons. Through order dated 06.11.2015, such application was dismissed by the Appellate Court. The petitioners challenged the aforesaid order before this Court through CR-8761 of 2015 – Shalender Kumar and another vs. Umesh Kumar Mittal and others, which petition was dismissed by this Court after holding that no error could be found in the order of the Appellate Court as the petitioners were found to be persons of means having regular source of income. The aforesaid order of this Court attained finality. Thereafter, the Appellate Court granted several opportunities to the petitioners to deposit the applicable Court fee but to no avail. Resultantly, on 22.03.2017, the Appellate Court dismissed the petitioners' appeal for non-deposit of Court fee. In the execution proceedings initiated by respondents No.1 and 2, the petitioners executed the sale deed in favour of the decree holders. Thereafter, the Executing Court directed issuance of warrants of possession which have admittedly been executed. The present petition was filed by the petitioners to challenge therein the orders passed by the Executing Court issuing warrants of possession as also to direct the Appellate Court to decide the appeal filed by them against the aforesaid decree dated 03.10.2015 after accepting the court fee from the petitioners as per rules which were applicable at the time of filing of the appeal.

For the reason that the warrants of possession have already been executed, learned counsel for the petitioners does not press the present petition qua the challenge to the orders passed by the Executing Court with regard to issuance of warrants of possession in execution of the decree dated 03.10.2015 passed by the Trial Court in favour of respondents No.1 and 2.

However, the prayer with regard to the issuance of a direction to the

Appellate Court to accept the court fee as per applicable rules and then to decide the petitioners appeal on merits is pressed. According to the learned counsel, as per the rules which were applicable at the time of filing of the petitioners' appeal, only half of the court fee which was been demanded was payable.

The relief for which the present petition has been pressed cannot be granted to the petitioners for the simple reason that no rules on which the prayer is based either find mention in the body of the petition nor have been brought to the notice of this Court at the time when the matter was heard.

Even otherwise, the record reveals that the petitioners filed their appeal in the year 2015 to challenge therein the aforesaid decree dated 03.10.2015 passed against them by the Trial Court. Even after the passage of nearly four years, they have failed to deposit the applicable court fee and this is in spite of the fact that adequate opportunities to do the needful have been granted to them by the Appellate Court and that in the proceedings initiated by them seeking to file their appeal as indigent persons, both the Appellate Court and this Court have found them to be persons of means having regular monthly source of income.

In view of the above, no merit is found in the present petition and the same is hereby dismissed.

No costs.

(DEEPAK SIBAL)
JUDGE

July 01, 2019
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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No