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

CR-3305-2017 (O&M)
Date of decision : 03.02.2020

Manjit Singh

... Petitioner

Versus

Surjit Singh and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr.Premjit Kalia, Advocate
for the petitioner.

Ms. Rupinder Kaur Thind, Advocate
for respondent Nos.1 and 2.

ALKA SARIN, J.

1. The present revision petition has been filed under Article 227 of the Constitution of India, challenging the order dated 05.04.2017, whereby the plaintiff-petitioner has been directed to pay *ad valorem* court fee.

2. In brief, the facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for possession as also for declaration to the effect that the agreement to sell dated 27.03.2012 executed by the plaintiff-petitioner in favour of the defendant-respondent No.1 had become infructuous and had also become un-executable and that the earnest money paid by the defendant-respondents to the plaintiff-petitioner stood forfeited. In the suit, a further prayer of consequential relief of permanent injunction for restraining the defendant-respondents from giving possession of the suit

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property to any third persons was also sought.

3. The case set up by the plaintiff-petitioner, in the plaint, was that the plaintiff-petitioner had entered into an agreement to sell with defendant-respondent No.1 on 27.03.2012. As per terms of the agreement, the total sale consideration was ₹99 Lacs per eight kanals with measurement of 5 feet Karam and out of which, the plaintiff-petitioner admitted having received ₹55 Lacs as earnest money at the time of execution of the agreement. The sale deed was to be executed on or before 02.01.2013, after payment of the remaining amount. The plaintiff-petitioner claimed that though sale deeds were executed qua portion of the land, possession of the entire property was delivered to the defendant-respondents. On the basis of the averments made in the plaint, the plaintiff-petitioner prayed for possession regarding land measuring 10 kanals 1.1 marlas out of the property measuring 29 kanals 2.2 marlas; Part (a) land measuring 26 kanals 17 marlas; Part (b) 1 kanal 6 marlas out of land measuring 3 kanals 8 marlas; and Part (c) 18.12 marlas out of land measuring 1 kanal 12 marlas, situated at Village Majitha, Tehsil and District Amritsar, as per jamabandi for the year 2011-12, as also for declaration to the effect that agreement dated 27.03.2012 executed by the plaintiff-petitioner had become infructuous and un-executable and that the earnest money paid by the defendant-respondents to the plaintiff-petitioner stood forfeited.

4. The defendant-respondents filed an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908, for rejection of the plaint, on the ground that the plaintiff-petitioner had not paid *ad valorem* court fee and hence, the plaint ought to be rejected.

5. Reply was filed to the said application and vide order dated

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05.04.2017, the said application was allowed.

6. Hence, the present revision petition has been filed by the plaintiff-petitioner.

7. I have heard learned counsel for the parties.

8. Learned counsel for the plaintiff-petitioner has contended that since he was not asking for cancellation of the agreement to sell, no *ad valorem* court fee has to be paid and he would be required to pay court fee as per Section 7(v)(a) of the Court Fees Act, 1870 i.e. ten times of the revenue payable on the land. According to the plaintiff-petitioner, court fee paid is already in excess of what it was required to be paid. In support of his contentions, he relies upon the following judgments:-

- 1. *Suhrid Singh @ Sardool Singh V/s Randhir Singh and others, 2010 AIR (SC) 2807;***
- 2. *Hardam Singh V/s Angrej Singh and others, 2014 (1) RCR (Civil) 929;***
- 3. *Gurshinder Singh V/s Pal Singh and others, 2014 (1) RCR (Civil) 651;***
- 4. *Amarpal Kaur V/s Harbant Rai, 2015 (8) RCR (Civil) 740;***
- 5. *Smt. Mukhtiar Inder Kaur V/s S. Avtar Singh, 1989 (1) RRR 573.***

9. *Per contra*, learned counsel for the respondents has stated that the plaintiff-petitioner is actually claiming cancellation of the agreement to sell and by merely stating in the plaint that the agreement to sell had become infructuous, the plaintiff-petitioner cannot get away from paying the *ad valorem* court fee.

10. It was further contended that being an executant of the agreement to sell, the plaintiff-petitioner, who was in fact seeking cancellation of the agreement to sell, would be required to pay *ad valorem* court fee. In support of her contentions, the counsel relies upon the

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following judgments:-

1. *N.N. Estate Private Limited V/s Surinder Goyal, 2012 (5) RCR (Civil) 591;*
2. *Kuldeep Kumar Khandelwal V/s Raghunandan Lal Behal and others, 2019 (133) ALR 542; and*
3. *Amit Chand V/s Raj Pal and others, 2011 (2) RCR (Civil) 521.*

11. The plaintiff-petitioner, in his plaint, has sought possession as well as relief for declaration to the effect that the agreement to sell executed by him in favour of defendant-respondent No.1 had been rendered infructuous and un-executable. However, a careful perusal of the plaint reveals that the plaintiff-petitioner is in fact seeking cancellation of the agreement to sell executed by him in favour of defendant-respondent No.1. It is trite that a litigant cannot be permitted to mould the relief only in order to save the court fee. The Full Bench of this court in the case of **"Niranjan Kaur V/s Nirbigan Kaur" 1982 PLR 127**, has laid down as under:-

*7. It is well-settled that the Court in deciding the question of Court-fee should look into the allegations made in the plaint to find out what is the substantive relief that is asked for. 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. Thus, in each case, the Court has to find out the real relief claimed by the plaintiff in the suit. Where the main relief is that of the cancellation of the deed, and the declaration, if any, is only a surplusage, the case would not be covered under section 7(iv)(c) of the Act, because in a suit under that clause, the main relief is that of a declaration and the consequential relief is just ancillary. In this respect, reference may again be made to **Mt. Zebul-Nisa v. Din Mohammad, AIR 1941 Lahore 97**, wherein it has been observed as follows:-*

"It seems obvious that the consequential relief referred to in section 7 (iv) (c) could not mean a substantive

*relief, the valuation of which is separately provided for in the Court-fee Act. If it were so held, a plaintiff could easily evade payment of the necessary Court-fee on the substantive relief by prefacing it with a declaration as to his rights. Every suit involves the establishment of certain rights of the plaintiff as necessary preliminary to the grant of the relief claimed by him. But the addition of a prayer for a declaration to such rights cannot convert a suit for a substantive relief into one for a declaratory decree where consequential relief is prayed for within the meaning of section 7(iv)(c), Court-fee Act. It is significant that the valuation of the relief in cases falling within the scope of section 7(iv)(c) is left to the plaintiff. This is presumably because the 'consequential relief' contemplated by the section is some ancillary relief to which the plaintiff becomes entitled as a necessary result of the declaration, but for which no separate provision is made in the Act. The essence of the relief in such cases lies in the declaratory part and the consequential relief being merely an auxiliary equitable relief, its evaluation seems to have been left to the plaintiff. The meaning of the expression consequential relief as used in section 7(iv)(c), Court-fee Act, was recently considered by a Full Bench of the Allahabad High Court (consisting of five Judges) in **Kalu Ram v. Babu Lal**, 54 Allahabad 812, and it was held that the expression 'consequential relief' means some relief, which would follow directly from the declaration given the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in the Act and cannot be claimed independently of the declaration as a 'substantial relief'. It follows, therefore, that if the relief claimed in any case is found in reality to be tantamount to a substantial*

relief and not a mere 'consequential relief' in the above sense, the plaintiff must pay Court-fee on the substantial relief."

8. It is the common case of the parties that in case the main relief in the suit is held to be that of cancellation of the sale deed, then the case is not covered by section 7(iv)(c) and the only provision applicable is Article 1, Schedule I of the Act. In order to bring the case under section 7(iv)(c) of the Act, the main and substantive relief should be that of a declaration and the consequential relief should be ancillary thereto. Moreover, if no consequential relief is claimed or could be claimed in the suit, then section 7(iv)(c) will not be attracted. Section 7(iv)(c) clearly contemplates suit to obtain the declaratory decree or order where consequential relief is prayed. It further provides that in all such suits, the plaintiff shall state the amount at which he values the relief sought. A further proviso has been added thereto by the Punjab Act No. 31 of 1953, which reads as follows:-

"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 the property calculated in the manner provided for by clause (v) of this section."

9. In a suit to obtain declaratory decree where no consequential relief is prayed, sub-clause (iii) of Article 17 of Schedule II of the Act, will be applicable, but the suit file by the plaintiff-petitioner was virtually, to all intents and purposes, for the cancellation of the sale deed, executed by her, in favour of the defendant-respondent. She cannot claim possession unless the said deed is cancelled by a decree of the Court. To say in the plaint, that it be declared that the sale deed, got executed from her as a result of the fraud, was void and not binding on her, does not convert the suit into one for a declaration with the consequential relief of possession so as to

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fall within the provisions of section 7(iv)(c) of the Act. To such a suit, the only article applicable is Article 1, Schedule I of the Act, and for that proposition, further support can be had from a Full Bench decision of the Allahabad High Court in Kalu Ram's case (supra) also wherein as regards the valuation of the relief as to the cancellation of the alienation, it has been held that such a relief falls neither under section 7(iv)(c) nor under Schedule II Article 17(iii), but under the residuary Article 1 Schedule I of the Act."

12. The judgements relied upon by learned counsel for the plaintiff-petitioner are of no help in furthering his case, inasmuch as a perusal of the plaint reveals that in fact the plaintiff-petitioner is claiming cancellation of the agreement to sell and where, being an executant of the agreement to sell, he is seeking cancellation of the agreement, he would be required to pay *ad valorem* court fee. In **Suhrid Singh's case** (supra), the plaintiff in the suit was not the executant of the sale deeds while in the present case, the plaintiff-petitioner is the executant of the agreement to sell. In fact the judgment relied upon by the counsel for the petitioner in the case of **Suhrid Singh's case** (supra) clearly lays down as under:-

"6. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B'-- two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a

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declaration that the deed executed by 'A' is invalid/void and non- est/ illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of ₹19.50 under Article 17(iii) of Second Schedule of the Act. But if 'B', a non- executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under Section 7(iv)(c) of the Act. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7."

13. The plaintiff-petitioner by way of astute drafting cannot get away by not paying *ad valorem* court fees. Admittedly the plaintiff-petitioner is the executant of the agreement, he necessarily will have to seek cancellation and by changing the phraseology from "Cancellation" to "infructuous", he cannot escape the payment of *ad valorem* court fees.

14. In view of above and as per the law laid down by the Full Bench of this Court in the case of “Niranjan Kaur's case (supra)” and Suhrid Singh's case (supra), I do not find any merit in the present revision petition. Hence, the same is dismissed. Any observation made in the present

order shall have no bearing on the merits of the case.

03.02.2020
Yogesh Sharma

(ALKA SARIN)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No