

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

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IN VIRTUAL COURT

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**CR No. 2506 of 2021
Date of decision : 6.12.2021**

M/s Boss Computers Private Limited

.....Petitioner

Vs.

Sachit Passi and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. C.B. Goel, Advocate, for the petitioner

Mr. Amit Jhanji, Senior Advocate with
Ms. Eliza Gupta, Advocate, for the caveator/respondent No.3

Rajbir Sehrawat, J. (Oral)

This petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 16.9.2021, passed by the Civil Judge (Junior Division), Dera Bassi, vide which the plaintiff company is required to affix ad-valorem Court fee on sale consideration of Rs.22 crores, in order to impugn the legality or seek cancellation of the sale deed dated 31.7.2019.

Broadly pleaded facts are; that the petitioner company entered into an agreement dated 28.2.2019 to sell the agriculture land comprising in Khasra No. 1514/1017 (2 bigha 7 biswe min North), 1515/1018 (2 bigha 11 biswe), 1518/1021 (3 bigha 9 biswe) and 1022 (4 bigha 9 biswe), 1024/1 (1 bigha 16 biswe), 935/1, 935/2, 935/3 measuring (1 bigha and 7 biswe), total 15 bigha 19 biswe (approximately 4 acres) situated at Village Dayalpura, Sub Tehsil Derabassi, District SAS Nagar in favour of respondent No.3. The

consideration; allegedly agreed for the said sale; was Rs.28 crores. The target date of execution of the sale deed was fixed to be 5.8.2019. As per the terms of the agreement to sell, the entire sale consideration was to be paid to the company through bank transactions and not by cash. The sale deed regarding the said land was executed on behalf of the petitioner on 31.7.2019. The amount of Rs.22 crores is stated to have been paid to the petitioner company in its account by bank transactions. Now the suit has been filed by the petitioner company seeking declaration that the agreement to sell dated 28.2.2019 and the sale deed dated 31.7.2019, purportedly executed by the plaintiff in favour of the respondent No.3 and further, the mortgage of the said land by respondent No.3; is null and void and the same needs to be cancelled. In alternate, it is also prayed that the respondents be directed to pay the deficient/unpaid amount of sale consideration. Still further, the injunctions have been sought in the plaint.

On receipt of the notice, respondent No.3 filed an application under Order 7 Rule 11 CPC; seeking rejection of the plaint on the ground of non-disclosure of cause of action, as well as, for non-payment of proper court fees. After considering the respective arguments of the parties, the trial Court has held that the suit/plaint discloses the cause of action. Therefore, the plaint as such, cannot be rejected. However, the trial Court has further ordered that ad- valorem Court fees is required to be paid on the plaint; because the petitioner, who is the executant of the sale deed, is seeking cancellation of the same. It is against that order, that the present petition has been preferred.

While arguing the case, the counsel for the petitioner has submitted that the agreement to sell was for an amount of Rs.28 crores. The

agreement specifically stipulates the entire sale consideration shall be paid through Bank and that the sale deed, if any, was to be executed by all the directors of the company jointly; and not severally. Hence, the sale deed should have been executed by all the directors or by a person duly authorised by all such directors who were signatories to the agreement to sell. In the present case, there was no valid resolution on behalf of the company either to execute the sale deed or to authorise the person, who is purported to have signed the sale deed, to execute the same in favour of respondent No.3. Therefore, the company cannot be taken as an executant of the sale deed. Hence, the petitioner company is not required to pay the ad-valorem court fees. The counsel has further submitted that the possession of the land is with the petitioner company. Therefore, the petitioner is not even seeking possession in the plaint. Since the petitioner is not seeking possession, therefore, the ad-valorem court fees is not required to be paid. The counsel for the petitioner has also submitted that the agreement to sell stipulated the sale consideration to be Rs. 28 crores, whereas, the sale deed shows the consideration having been paid as Rs. 22 crores. Even a reference of the agreement to sell has not been made in the sale deed. This also shows that the person executing the sale deed in favour of the respondent No.3, deliberately manipulated the things and he was never authorised by the company to execute the sale deed. To support his contention that since the petitioner is not the executant of the sale deed and is not seeking possession of the suit property, therefore, it is not required to pay the ad-valorem court fees, the counsel for the petitioner has relied upon the judgment rendered in the case of **'Suhrid Singh @ Sardool Singh v. Randhir Singh and others; (2010) 12 SCC 2087'**. While reiterating the earlier

argument, the counsel for the petitioner has submitted that under the Companies Law, the company is supposed to act through resolutions. In the present case, there is no resolution presented, either at the time of execution of the sale deed; or now even with the application filed by the respondents under Order 7 Rule 11 CPC. Nor the copy of such a resolution has been sent to the Registrar of Companies, as required under the Companies Act. Hence, the order passed by the Court below is totally without any legal warrant. Accordingly, the order deserves to be set aside. Moreover, the Court fees is the matter between the plaintiff and the Court, therefore, the defendant could not have even filed the application under Order 7 Rule 11 CPC.

Replying to the arguments raised by the counsel for the petitioner, learned senior counsel for respondent No.3 has submitted that the sale deed has been executed by none other than the petitioner company itself. The petitioner is a statutory entity under the Companies Act. The property was owned by the company and not by any director. The sale deed has been executed by the company through a person, who was, undisputedly, the director of the company at the relevant time. The counsel has further submitted that even the plaint filed by the petitioner company shows that on the date of execution of the sale deed, the person who claims to represent the petitioner company in this suit, was not even a director. Referring to the paragraphs No. 1.1, 1.4 and 1.5 of the plaint, the counsel for the respondents has submitted that it is the pleaded case of the petitioner itself that from 1.5.2019 till 5.6.2020, the defendants No.1 and 2 were the only directors and incharge of the affairs of the company. The person who claims to represent the company now, re-joined as a director only on 5.6.2020; along with respondents No.1 and 2. However, in the meantime,

the sale deed already stood executed on 31.7.2019. It is one of the directors, who were in position on the date of execution of the deed, who has executed the sale deed. The other director had attested the resolution of the company, which was produced before the Sub Registrar qua authorising the executing director to execute the sale deed in favour of the respondent No.3. Hence, the sale deed was duly executed by the authorised person. It is further submitted that even if the resolution of the company was not there, still the sale deed is purported to have been executed by the company only. Hence, the company has to be taken as the executant. To reiterate his argument, the counsel for the respondent has referred to the payments of the amount of sale consideration to show that the entire amount of Rs. 22 crores had been deposited/transferred in the account of the company through bank transactions. Hence, there is no doubt that the sale deed was executed by the plaintiff company only. Hence, the company was required to pay the ad-valorem court fees to file its suit. The counsel for the respondents, by referring to Para 10 (V) of the plaint, has also submitted that the plaintiff company has even admitted in the plaint that possession of the land sold in favour of the respondents is with the respondents. Hence, this is an admission of the fact that the property has been duly sold by the company. The petitioner company; though may not have sought possession in the present plaint, however, that was a ploy only to avoid payment of court fees. Otherwise, once it is admitted by the plaintiff that the possession is with the defendant, then a suit simpliciter for declaration of the sale deed as void is not even maintainable. Supplementing his argument, the counsel for respondents has further submitted that although the plaintiff/petitioner has challenged the agreement to sell, however, even the

prayer in the plaint clearly shows that it is claiming even the difference of the amount paid by the respondents and as claimed to have been mentioned in the same agreement to sell. This also leaves no doubt that it is the company who is the executant of the sale deed and it is even ratifying the sale deed by claiming the difference of the sale consideration.

Having considered the arguments of the counsel for the parties and having perused the record, this Court finds substance in the arguments of the counsel for the respondents. Undisputedly, the suit property was owned by the company. It cannot be taken to be property of any director or even of all the directors jointly or severally. The sale deed has been executed in the name of the company. Even the person, presenting the sale deed for registration and signing the same, is admitted to be one of the directors on the date of execution of the sale deed. Therefore, the sale deed itself proclaims to have been executed by the company. Although counsel for the respondents has referred to a resolution passed by the company authorising the director signing the sale deed to execute the same but the petitioner disputes the veracity of that resolution, however, that could be only a point to be adjudicated after taking evidence during the trial of the suit but that aspect is not relevant for the purpose of assessment of the court fees. For the purpose of court fees, it is more than sufficient that the plaintiff himself has pleaded in the plaint that the person, who executed and signed the sale deed on behalf of the company, was one of the two directors; and the other director, as on that date, has not even come forward to dispute the same. Although the petitioner might have entered as a director subsequently, but on the date of sale, he was, admittedly, not even a director. Therefore, he cannot claim to have any authority to insist upon

signing the sale deed. Although to draw his claim qua being a mandatory signatory to the sale deed to be executed pursuant to the agreement to sell, the petitioner has submitted that in the agreement to sell it was written that all the directors, who were signatory to the agreement to sell, would be required to sign the sale deed, however, this argument is totally irrelevant because the property was owned by the company and not by any directors jointly or severally and, accordingly, only those persons would have right to sign the sale deed, who were the directors of the company on the date of sale or their authorised representative. Any earlier arrangement qua authority to sign the sale deed on behalf of the company is rendered totally nugatory. Although the counsel for the petitioner has relied upon the judgment rendered by the Supreme Court in the case of **Suhrid Singh** (supra) and has submitted that the petitioner was not the executant and is in possession of the property also, therefore, the court fees is not required to be paid ad-valorem, however, this argument of the counsel for the petitioner is also liable to be noted only to be rejected. The judgment cited by counsel for the petitioner is totally distinguishable. In the said judgment, by way of example, the Supreme Court has mentioned two brothers being co-owners and only one executing the sale deed. Therefore, the second brother has been held to be not the executant and therefore, was held to be not liable to pay the ad-valorem court fees. However, in the present case, there was only one owner of the property. It was the company. The sale deed is executed by none other than the said company. Hence, the said judgment has no relevance with the facts of the present case.

Another aspect which has come up from the arguments of the counsel for the parties is; that the petitioner itself has admitted that the

possession of the property had gone to the defendants pursuant to the sale deed. The difference of price, as reflected in the sale deed and as reflected in the alleged agreement to sell, has also been claimed in the plaint by the petitioner as an alternate relief. This also leaves no doubt that the petitioner company itself perceives and accepts the sale deed as having been executed by a proper person. It is a different matter whether the mere suit for declaration and cancellation of the sale deed could have been filed by the petitioner without seeking relief of possession, however, the fact remains that the plaintiff itself has claimed cancellation of the sale deed, though by way of declaration of the same to be null and void.

The argument of the counsel for the petitioner to the effect that the court fees is a matter between the plaintiff and the court and, therefore, the court should not have pass any order regarding the court fees on an application moved by the respondents/defendant under Order 7 Rule 11 CPC, is also totally mis-conceived. It is obvious that the power under Order 7 Rule 11 CPC is with the Court only. However, the defendant is not estopped from bringing to the notice of the court that the deficient court fees has been affixed by the plaintiff. By moving such an application, the defendant only initiates the power of the Court in the nature of his public duty. Thereafter, the Court passes the order only if it finds the deficiency in the court fees as per the provisions of law. Hence, it is not by way of enforcement of any right of the defendant that the court orders for making payment of deficient court fees, rather, it is only in exercise of its public powers by the Court, though after being initiated on an information received from the defendant.

At the fag end of the argument, this has also come from both the

sides that after the trial Court initially granted time for payment of the Court fees and the same was not deposited within the time, the petitioner had moved an application for extension of the time under the said provisions and the trial Court has granted the petitioner time upto 14.12.2021 to make good the deficiency in court fees. The counsel for the petitioner has submitted that the petitioner be granted some more time to make good the deficient court fees. This Court finds substance in this prayer of the counsel for the petitioner.

In view of the above, finding no merit in the present petition, the same is dismissed. However, the petitioner is granted permission to make good the deficiency in court fees, as ordered by the trial Court, latest by 31.01.2022.

It is also clarified that nothing observed in the order hereinabove, would be taken as an expression on merits of the case; during the trial of the suit.

(RAJBIR SEHRAWAT)
JUDGE

6.12.2021

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No