

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr.No.120

Civil Revision No.1036 of 2022
Date of Decision: 24th March, 2022.

Sushila Devi

...Revisionist-Petitioner

Versus

J.D.Universal Infra Ltd. & Others

...Respondents

(Heard through Video-Conferencing)

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. J.K. Goel Advocate,
for the revisionist-petitioner.

* * * * *

MEENAKSHI I. MEHTA, J. (ORAL)

Feeling aggrieved by the order dated 28.01.2020 (Annexure P-4) passed by the Civil Judge (Senior Division) Karnal (for short 'the trial Court') whereby the application moved by the petitioner (arrayed as defendant No.3 in the Civil Suit) under Order 7 Rule 11 CPC for seeking rejection of the plaint has been dismissed, she (petitioner) has preferred the instant revision-petition to assail the same.

As per the brief factual-matrix culminating in this revision petition, respondent No.1-Company (the plaintiff before the trial Court) filed a Civil Suit for seeking a decree for declaration to the effect that the transfer of the land by respondent No.2 (defendant No.1 in the Civil Suit) in favour of the petitioner is illegal, null and void and it also prayed for the relief of mandatory injunction by way of the issuance of direction to respondent-

defendant No.4 to recover the EDC/ IDC/Development Charges including the interest, for the land measuring 9 Kanals 1 Marla from respondents No.2 & 3 (defendants No.1 & 2) and also the direction to the said respondents to pay these charges to respondent No.4 and it has further sought the relief of permanent injunction to restrain the petitioner and respondents No.2 & 3 from interfering in the possession of and the construction being raised by Rajiv Garg on a part of the land and also from alienating the said land. Respondent No.1-Company has averred in the plaint that on 28.06.2010, respondents No.2 & 3 entered into an agreement with it to sell their land measuring 65 Kanals 1 Marla and subsequently, they executed a Collaboration Agreement on 02.07.2010 to develop the said land. Then, on 05.04.2013, a fresh Agreement to Sell was executed between them for the sale of the land measuring 56 Kanal-0 Marla and the sale deed was executed and got registered accordingly and the remaining land measuring 9 Kanal 1 Marla was retained by respondents No.2 & 3 while agreeing to pay the above-said charges qua the same but respondent No.2 transferred some land out of the said retained land to the petitioner in violation of the above-said Collaboration Agreement and the said respondents have refused to abide by all the terms and conditions laid down in the same.

I have heard learned counsel for the petitioner in the present revision petition and have also perused the file thoroughly.

Learned counsel for the petitioner contends that respondent No.1-Company has sought the recovery of an amount of Rs.3,47,12,280/- in the Civil Suit but it has not affixed/paid the *ad-volarem* Court fee as mandated under the Court Fees Act and moreover, the Civil Suit is not

maintainable in view of Section 34 of the Specific Relief Act and therefore, the impugned order regarding the dismissal of the afore-said application of the petitioner is patently illegal and is liable to be set aside.

As regards the contention regarding the non-affixation of the proper Court fee by respondent No.1 on the plaint, it has categorically been held by the Apex Court in **Sri Rathnavarmaraja vs. Smt. Vimla 1961 AIR (Supreme Court) 1299** that *“the question of affixation/payment of the Court fee is between the plaintiff and the State and the said defendant had no right to move the superior Courts by way of appeal or revision petition in the eventuality of the said question having been decided against him”*.

So far as the contention raised qua the non-maintainability of the Civil Suit in view of Section 34 of the Specific Relief Act is concerned, it is worth-while to mention here that all the pleas raised by respondent No.1-Company in the plaint have their genesis in the above-mentioned Collaboration Agreement and the Agreements to Sell and thus, these agreements are the 'Magna Carta' for the dispute between the parties. It being so, it is quite explicit that the question of the maintainability of Civil Suit would be a mixed question of law and facts and hence, the same cannot be adjudicated upon at this stage, i.e at the very threshold of the proceedings in the said Civil Suit. Even otherwise, it is well settled that while considering an application under Order 7 Rule 11 CPC, the Court is to look into and consider the pleadings canvassed in the plaint itself and is not supposed to look into the strength or weakness of the case of the plaintiff or into the defence raised by the defendant(s).

As a sequel to the fore-going discussion, it follows that the

instant revision petition deserves dismissal. Resultantly, the same stands dismissed accordingly.

(MEENAKSHI I. MEHTA)
JUDGE

24.03.2022.
seema

Whether speaking/reasoned?	Yes
Whether Reportable?	Yes