

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

112

**CR-2139 of 2019 (O&M)
Date of decision: 30.11.2022**

Anil Kumar

..Petitioner

Versus

Ajay Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Jain, Advocate, for the petitioner.
Mr. Dhananjay Singh, Advocate, for the respondents.

ANIL KSHETARPAL, J(Oral)

1. An application filed by the defendant to reject the plaint in exercise of powers under Order VII Rule 11 of the Code of Civil Procedure, 1908 has been dismissed by the trial Court.
2. The defendant assails the correctness of the aforesaid order dated 22.10.2018, passed by the trial Court.
3. The petitioner claims that the plaintiffs have failed to pay the Court fee as the relief sought in the suit is for the possession as well as the mesne profits for use and occupation of the premises. While elaborating, he submits that once the relief of possession has been sought, the ad valorem Court fee on the market value of the property is required to be fixed while filing the suit.
4. The trial Court after examining the contents of the plaint has observed that, in substance, the suit is filed for the grant of mandatory injunction as the defendants are alleged to be in the occupation of premises as a licensee. The suit has been filed after termination of the defendant's licence.
5. This Bench has heard the learned counsels representing the

parties at length and with their able assistance perused the paper book.

6. Para 5 and 7 of the plaint reads as under:-

“5. That since a double storey building was constructed over the suit property by the plaintiff in which he allowed the defendant no.3 to reside over the first floor thereof as licensee and the same has already been terminated/revoked than and there at the time of cancellation of Tin Number and business between the father of plaintiff and defendant no.3.

7. That since the plaintiffs are lawful owners in possession of the suit property, thus they are entitled to seek the possession of both floors i.e ground and first of the suit property bearing Shop No.96, and they are also entitled to seek mesne profit @ Rs.80,000/- per month on account of the unauthorized use and occupation of the suit property from the defendants from the date of filing of this suit till realization with interest @ 18% per annum. However, the plaintiffs have left and given the concession to the defendants regarding mesne profit prior to filing of the present suit.”

7. Though, the suit has been styled for possession, however in substance the suit is for mandatory injunction. Hence, the plaintiff has already paid Court fee of Rs. 690/-.

8. As regards the liability to pay ad valorem court fee on the relief of mesne profits, it may be noted that the plaintiffs have not sought any recovery of arrears. It is only the recovery of the mesne profit during the pendency of the suit has been sought by the plaintiffs.

9. Hence no ground to interfere is made out.

10. Dismissed.

11. All the pending miscellaneous applications, if any, are also disposed of.

November 30, 2022

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*