IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CR-1654-2022
Date of decision: 02.05.2022

RAKESH KUMAR SAINI .....Petitioner

Versus

CHARAN SINGH AND ANR .....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Vikram Saini, Advocate for the petitioner.

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MANJARI NEHRU KAUL, J. (ORAL)

The instant petition has been filed under Article 227 of the Constitution of India to impugn the order dated 29.03.2022 (Annexure P-7) passed by learned JMIC, Mohali in case bearing No.CS-104-2022 titled as 'Charan Singh Vs. Rakesh Kumar Saini and another' whereby an application moved by the petitioner-defendant No.1 for rejection of plaint under Order 7 Rule 11 read with Section 151 CPC was dismissed.

Learned counsel for the petitioner inter alia contends that the suit of respondent No.1-plaintiff for permanent injunction is not maintainable in view of the provisions of Section 41(h) of the Specific Relief Act, as there is an equally efficacious relief of specific performance of the agreement to sell dated 16.04.2021 available to respondent No.1-plaintiff. He further submits that respondent No.1-plaintiff has intentionally under valued the relief claimed so as to avoid paying the advalorem court fee since the total sale consideration of the agreement to sell is Rs.78,00,000/-. Learned counsel submits that on this ground itself, the plaint being insufficiently stamped, should have been rejected by the court below. He further contends that the suit of the plaintiff is also barred by limitation in view of the Article 54 of the Limitation Act, 1963. In support, learned counsel has placed reliance upon ***Atma Ram Vs. Charanjit Singh : AIR 2020 Supreme Court 3413***.

I have heard learned counsel and perused the relevant material on record.

Respondent No.1-plaintiff averred in the plaint that on 17.08.2021, the date of execution of the sale deed was extended to 30.04.2022, therefore, the cause of action for filing the suit for specific performance would arise only after 30.04.2022, if the sale deed was not executed by the petitioner-defendant No.1 in favour of respondent No.1-plaintiff.

Since no equally efficacious remedy was available to respondent No.1-plaintiff as alleged by the petitioner-defendant No.1, on the date of institution of the suit in question, the present suit for permanent injunction was thus maintainable. Whether or not the date was actually extended would be a matter to be appreciated during trial and the same cannot be gone into by this Court at this stage.

The contention of the learned counsel for the petitioner with respect to the suit being under valued and insufficiently stamped inasmuch as advalorem court fee was not affixed, is bereft of any merit. It is settled law that no advalorem court fee is required to be affixed where relief claimed in a plaint is for injunction.

Coming to the last contention of the learned counsel with respect to the Article 54 of the Limitation Act, 1963, this Court has no hesitation in holding that it is not applicable to the case in hand since it is a suit for permanent injunction and not for specific performance of a contract. Even otherwise, period of limitation for a suit for specific performance of a contract is three years from the date fixed for the performance of the contract. Therefore, the suit cannot be said to be barred by limitation.

Dismissed.

02.05.2022 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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