

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-3019-2018 (O&M)
Date of decision: 01.05.2023

Parveen

...Petitioner

VS

Adeep Wadhawan

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. H.P.S.Bhinder, Advocate,
For the petitioner.

Mr. S.S.Mann, Additional A.G., Haryana.
For respondents No.1 and 2.

Mr. R.S.Chugh, Advocate,
For the respondent.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 20.04.2018 passed by learned Civil Judge, (Junior Division), Jagadhri vide which application filed under Order 7 Rule 11 read with Section 151 CPC for rejection of the plaint moved by the defendant/respondent was allowed and plaintiff/appellant was directed to affix the deficient *ad valorem* Court fee.

2. Brief facts first, as pleaded in the instant petition.

2.1. Petitioner entered into an agreement to sell with respondent for a house having plot area of 233 sq. yards situated at Jagadhri, District Yamuna Nagar along with all other rights appurtenant thereto. Respondent also paid earnest money to the tune of Rs.10 lakh to petitioner.

2.2. Petitioner went to office of Sub Registrar, Jagadhri to get the sale deed executed in favour of respondent and kept waiting for respondent who did not show up. Ultimately, he got his presence marked and returned. Petitioner then sent a legal notice regarding forfeiture of earnest money followed by preferring a suit under Section 27 of Specific Relief for rescinding/cancellation of agreement to sell dated 24.05.2018 executed by petitioner/plaintiff in favour of respondent/defendant.

2.3. Respondent appeared and filed application under Order 7 Rule 11 CPC for rejection of plaint on the ground of deficient court fee. Same was allowed and petitioner was directed to pay *ad valorem* Court fee. Hence the instant petition.

3. Learned counsel for the petitioner submits that provisions of Order 7 Rule 11 CPC are not applicable to the facts of the present case and the suit of petitioner/plaintiff has been properly valued for the purpose of court fee and jurisdiction. No *ad valorem* Court fee is required to be paid.

4. Learned counsel for the respondent(s) vehemently opposes the civil revision and supports the impugned order.

5. I have heard learned counsel for parties and gone through the case file.

6. Order assailed herein is premised *inter alia* on the following reasoning:

“6. With regard to the plea of non-affixing of *advalorem* court fee by the plaintiff, it is necessary to refer to the case of *Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others*, 2010(2) RCR (Civil) 564; 2010(2) Raj 436 wherein the Hon'ble Supreme Court has held as under:-

"6. Where the executants 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 nonest, 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 executants of the deed, wants to avoid it, he has to sue for a declaration that the deed executants 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 executants of the deed, seeks cancellation of the deed, he has to pay advalorem court fee on the consideration stated in the sale deed. If B, who is a non executants 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 Rs. 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."

7. *From the relevant paragraph of above-mentioned pronouncement of Hon'ble Supreme Court, it is amply clear that when executants of sale deed seek its cancellation, he is required to affix ad-valorem court fee on the sale consideration. It further says that when a person is seeking declaration that sale deed is null and void being not a party to the sale deed and is also not seeking possession, he is not required to affix advalorem court fee but where a person is seeking cancellation of sale deed along with consequential relief of possession, he is required to affix ad valorem court fee even if he is not a party to sale deed.*

8. *Now, coming back towards the facts of present case. The plaintiff was a party to the agreement to sell dated 24.05.2014 and executed in favour of defendant/applicant. Meaning thereby, the validity of alleged sale deed brought under scrutiny by its executants i.e. plaintiff. Therefore, if the plaintiff seeking cancellation agreement to sell, then also he is required to pay advalorem court fee on the sale consideration and not on the earnest money.*

9. *For the reasons recorded above, the application in hand is allowed. Now, the plaintiff is directed to affix the*

deficient ad valorem fee on the next date of hearing i.e. 04.05.2018.”

7. A perusal of above leaves no manner of doubt that there is no irregularity in law, so as to exercise extraordinary revisional jurisdiction vested with this Court. Order impugned herein has been passed as per the ratio enunciated in the judicial precedents cited therein.

8. Remaining contentions in the petition have been duly considered and rejected by Learned Court below by giving sound and convincing reasons in the impugned order, more particularly in the part extracted above. I am inclined to agree with the view thereon taken by learned Court below.

9. In the premise, petition herein is dismissed. It is however made clear that, *ad valorem* Court fee will have to be affixed as per the Court Fee Act on the quantum of earnest money sought to be retained by way of a decree, so as to make the decree executable, in case claim is accepted.

10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

01.05.2023

Vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No