

CR-3079-2017

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3079-2017

Date of Decision :13.04.2023

Sunder Pal

...Petitioner

Versus

Raj Kumar @ Raja Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Kuldip Singh, Advocate for the petitioner.

Mr. Manvinder Singh Dalal, Advocate for the respondents.

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Harsimran Singh Sethi, J. (Oral)

Present revision petition has been filed challenging order dated 06.04.2017 passed by the Civil Judge (Junior Division), Kaithal by which, application moved by the petitioner-defendant No.2 under Order 7 Rule 11 of the CPC for the rejection of the plaint being undervalued was dismissed.

Learned counsel for the petitioner-defendant No.2 argues that as per the settled principle of law, Court fee required to be paid was not paid the respondent-plaintiff, which itself makes the suit non-maintainable hence, the reasons given by the Court below in the impugned order dated 06.04.2017 are incorrect and the impugned order is liable to be set aside and application filed by the petitioner-defendant No.2 is liable to be allowed.

Learned counsel for the respondents on the other hand submits that the present revision petition is not maintainable keeping in view the judgment of the Hon'ble Supreme Court of India in **Civil Appeal No.624-**

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1960 titled as *Sri Rathnavarmaraja vs. Vimla* decided on 27.02.1961 wherein, it has been held that where an application filed by defendant for rejection of the plaint under Order 7 Rule 11 of the CPC for inadequate Court fee has been rejected, the revision petition is not maintainable as the fixation of Court fee is a matter between plaintiff and State and in case at a later stage the Court finds that the Court fee appended was less, a direction can be given to affix appropriate Court fee.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

In the present case, by the impugned order dated 06.04.2017, an application filed by the petitioner-defendant No.2 under Order 7 Rule 11 of the CPC has been dismissed and the plea raised that Court fee appended is undervalued, has not been accepted. That being so, keeping in view the judgment of the Hon'ble Supreme Court of India in Rathnavarmraja (supra), revision petition is not maintainable. Relevant paragraph of the judgment is as under:-

“The Court-fees Act was enacted to collect revenue for the benefit of the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action. By recognising that the defendant was entitled to contest the valuation of the properties in dispute as if it were a matter in issue between him and the plaintiff and by entertaining petitions preferred by the defendant to the High Court in exercise of its revisional jurisdiction against the order adjudging court-fee payable on the plaint, all progress in the suit for the trial of the dispute on the merits has been effectively frustrated for nearly five years. We fail to appreciate what grievance the defendant can make by seeking to invoke the revisional jurisdiction of the High Court on the question whether the plaintiff has paid adequate court-fee on his plaint. Whether proper court-fee is paid on a plaint is primarily

a question between the plaintiff and the State. How by an order relating to the adequacy of the court-fee paid by the plaintiff, the defendant may feel aggrieved, it is difficult to appreciate. Again, the jurisdiction in revision exercised by the High Court under s. 115 of the Code of Civil Procedure is strictly conditioned by cls. (a) to (c) thereof and may be invoked on the ground of refusal to exercise jurisdiction vested in the Subordinate Court or assumption of jurisdiction which the court does not possess or on the ground that the court has acted illegally or with material irregularity in the exercise of its jurisdiction. The defendant who may believe and even honestly that proper court-fee has not been paid by the plaintiff has still no right to move the superior court by appeal or in revision against the order adjudging payment of court-fee payable on the plaint. But counsel for the defendant says that by Act 14 of 1955 enacted by the Madras Legislature which applied to the suit in question, the defendant has been invested with a right not only to contest in the trial court the issue whether adequate court-fee has been paid by the plaintiff, but also to move the High Court in revision if an order contrary to his submission is passed by the Court. Reliance in support of that contention is placed upon sub-s. (2) of [s. 12](#). That sub-section, in so far as it is material, provides”.

Learned counsel for the petitioner-defendant No.2 has not been able to show that judgment of the Hon’ble Supreme Court of India in Rathnavarmraja (supra) is not applicable in the facts and circumstances of the present case.

Keeping in view the above, the present revision petition is dismissed being not maintainable keeping in view the judgment of the Hon’ble Supreme Court of India in Rathnavarmraja (supra).

It may be clarified that dismissal of the present revision petition will not debar the competent Court of law to assess the appropriate Court

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fee at the time of final adjudication.

April 13, 2023

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(HARSIMRAN SINGH SETHI)

JUDGE

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