

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

CR-537-2019 (O&M)

Reserved on : 20.12.2022

Date of Decision : 04.01.2023

Varinder Kumar and Anr.

...Petitioners

VERSUS

M/s ELDECO Infrastructure and Properties Ltd. & Ors.

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. M.K. Pundir, Advocate for the petitioners.

Mr. Sunish Bindlish, Advocate and

Mr. Prashant Rana, Advocate for respondent Nos.1 to 5.

ALKA SARIN, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 13.10.2018 (Annexure P-8) whereby the application under Order 7 Rule 11 CPC filed by the defendant-respondent No.5 has been allowed and the plaintiff-petitioners have been directed to pay the *ad valorem* court fees on the plaint.

The brief facts relevant to the present *lis* are that the plaintiff-petitioners filed a suit for declaration to the effect that the plaintiff-petitioners were entitled to get the respective sale agreements of two units No.332 and 341, measuring 349 sq. yards each, situated at ELDECO Estate One, GT Road, Village Bhattian/Hussainpura, District Ludhiana, executed in

their joint names from the defendant-respondent No.1 as well as for

mandatory injunction and permanent injunction. Initially an application was filed under Order 7 Rule 11 CPC for rejection of the plaint on behalf of defendant-respondent No.1. The said application was dismissed vide the order dated 02.12.2017. Subsequently, an application was filed on behalf of defendant-respondent No.5 (a property dealer) for rejection of the plaint on the ground that *ad valorem* court fee had not been paid. The Trial Court vide the impugned order has directed the plaintiff-petitioners to affix the *ad valorem* court fees treating it to be essentially a suit for specific performance and for possession.

Learned counsel for the plaintiff-petitioners would contend that the present suit is not a suit for specific performance but rather a suit for declaration along with prayers for mandatory injunction and permanent injunction. A huge amount had been paid by the plaintiff-petitioners towards payment of the said units. However, the defendant-respondents cancelled the allotment of the said units. The Trial Court had on an earlier occasion deemed it proper to dismiss the application filed by defendant-respondent No.1 vide order dated 02.12.2017. The order dated 02.12.2017 was not challenged in any judicial proceedings. For some time, before the Trial Court, the counsel representing the defendant-respondent No.1 and defendant-respondent No.5 was the same and even before this Court the same counsel is representing the defendant-respondent No.1 and the defendant-respondent No.5.

Learned counsel for the defendant-respondents would contend that a separate application was filed by defendant-respondent No.5 under Order 7 Rule 11 CPC which has been rightly been disposed off by treating the present suit to be a suit for specific performance and for possession.

It is trite that the matter of court fees is a matter between the plaintiff and the Court and in case at the time of final adjudication if the court fees is found to be deficit, the plaintiff-petitioners can always be asked to make good the court fees. However, the present case cannot be treated as a suit for specific performance at this stage. The Trial Court has erred in law in treating the present suit as a suit for specific performance and directing the plaintiff-petitioners to affix the *ad valorem* court fees especially in view of the fact that a previous application on similar grounds stood rejected and attained finality inasmuch as the same was not challenged any further.

In view of the above, the impugned order dated 13.10.2018 is set aside. It is, however, made clear that in case there is any deficiency in court fees found at the time of final adjudication, the Court would always be at liberty to ask the plaintiff-petitioners to make good the court fees.

The present revision petition stands disposed off accordingly.
Pending applications, if any, also stand disposed off.

04.01.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO