

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

CR-745-2023 (O&M)

Date of decision: 15.02.2023

Sudarshan Kumar

...Petitioner

Versus

Raghubir Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. S.R. Hooda, Advocate for the petitioner.

H.S. MADAAN, J.

Under challenge in this revision petition is the order dated 07.01.2023, passed by the Court of Addl. District Judge, Kurukshetra, accepting the appeal in the process setting aside order dated 10.07.2019 passed by the trial Court allowing application under Order 7 Rule 11 CPC filed by the defendants.

Briefly stated facts of the case are that plaintiffs Raghubir Singh and others had brought a suit for declaration and possession with permanent injunction against defendants Shri Guru Ravi Dass Sabha Station Majri, Shahabad (M), District Kurukshetra through its President and others.

On getting notice, the defendants had put in appearance in the Court. Defendants no.6 & 7 had filed an application under Order 7 Rule 11 CPC seeking dismissal of the suit on two grounds; firstly, the

requisite ad valorem Court fee having not been affixed on the plaint and secondly for the reason of suit being time barred. That application was dismissed by the trial Court.

Feeling aggrieved, defendant Sudarshan Kumar had approached this Court by way of filing a Civil Revision Petition bearing No.7983-2016 which was decided on 08.02.2018 with the observations that issue of limitation was kept open with liberty to the revision petitioner to raise all the pleas in the written statement and with regard to payment of Court fee, two months time was granted to the plaintiff to do the needful, failing which the revision petitioner was at liberty to take recourse to the remedies in accordance with law. Thereafter the matter again came before the trial Court.

Defendants No.6 & 7 filed an application for dismissal of the suit for non-compliance of order dated 08.02.2018 passed by the High Court in the revision petition. That application was resisted by the plaintiffs. The trial Court, vide order dated 10.07.2019 rejected the plaint under Order 7 Rule 11 CPC for the reason that plaintiffs had failed to affix ad valorem Court fee within the stipulated period of two months as per directions issued by this Court. Inter alia, in the order it was observed that the plaintiffs had deposited Court fee of Rs.2,43,800/- but the value of the land assessed by the plaintiffs was much less than the market value which was Rs.25,000/- per sq. yard as per collector rate submitted by the defendants and considering that rate, the market value of the suit property would come out to be more than Rs.1,50,00,000/-.

Feeling aggrieved by that order, the plaintiffs had approached District Judge, Kurukshetra by way of filing an appeal, notice of which was given to the defendants who had put in appearance. After hearing arguments, learned Addl. District Judge, Kurukshetra to whom the appeal had been assigned accepted the appeal and set aside the order passed by the trial Court, leaving the defendant Sudarshan Kumar aggrieved and he has approached this Court by way of filing the present revision petition.

I have heard learned counsel for the petitioner besides going through the record.

In the impugned order, the Appellate Court in para No.8 has observed that the issue of exact valuation of suit property needs adjudication on the basis of appropriate evidence and in case after such evidence adduced by the parties, the suit property is found undervalued, the plaintiffs may be directed to complete the deficiency of Court fee by giving an opportunity and if then the plaintiffs failed to comply with such direction, the consequences under Order 7 Rule 11 CPC are bound to follow. However, in this case, Court fee of Rs.2,43,800/- has already been paid by the appellants/plaintiffs for seeking the main relief of declaration possession qua the suit property and therefore, the plaint is not liable to be rejected under Order 7 Rule 11 CPC and further appellants/plaintiffs must be given an opportunity to agitate their claim on merits though subject to compliance qua Court fee.

I find this order to be quite detailed and well reasoned. No

illegality or infirmity is found to be there. The order is without any element of arbitrariness or perversity and I do not see any reason to interfere with such order. It seems that the revision petitioner is more interested in getting the plaintiffs non-suited for technical reasons, rather than contesting the case on merits. Even otherwise, payment of Court fee is essentially a matter between a litigant and the Court and the revision petitioner is unnecessarily showing undue anxiety with regard to the alleged undervaluation of the suit property by the plaintiffs for the purpose of affixation of Court fee. The revision petition is found to be without merit and is dismissed accordingly.

15.02.2023
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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No