

CR-2146-2023

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. 2023:PHHC:067408

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2146-2023

Date of Decision :10.05.2023

Sukhwinder Kaur and others

....Petitioners

Versus

Shashi Bala

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vishal Aggarwal, Advocate for the petitioners.

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Harsimran Singh Sethi, J. (Oral)

1. Present civil revision petition has been filed challenging order dated 13.03.2023 (Annexure P/8) passed by the Civil Judge, (Junior Division), Bathinda by which, an application filed by the petitioners-defendants under Order 7 Rule 11 of the CPC for rejection of plaint has been dismissed.

2. Learned counsel for the petitioners-defendants argues that as objection was raised qua the maintainability of the suit by filing an application under Order 7 Rule 11 of the CPC that keeping in view the fact that during the pendency of the suit, the same was amended so as to include the prayer for restoration of possession according to which amendment allowed, the plaintiff-respondent was required to affix the required Court-fee, which application has been rejected by the trial Court on the ground that the suit was already filed with the averment that the possession is with the plaintiff-respondent but the same was taken during the pendency of the

suit, which necessitated the amendment and as the prayer is for restoration of the possession, the contention that Court-fee is to be affixed as per the amended prayer cannot be accepted, which opinion of the Court below is not correct.

3. I have heard learned counsel for the petitioners-defendants and gone through the record with his able assistance.

4. In the present petition, the application filed under Order 7 Rule 11 of the CPC on the ground that the Court-fee required to be affixed in accordance with law, has been dismissed by the Court below vide impugned order dated 13.03.2023.

5. As per the judgment of the Hon'ble Supreme Court of India in **Civil Appeal No.624-1960** titled as **Sri. Rathnavarmaraja vs. Smt. Vimla** decided on 27.02.1961 in case the question of Court-fee is decided against the defendant, the defendant has no right to move to superior Court by way of appeal or revision. Relevant paragraph of the judgment is as under:-

*“2. **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 subsection, in so far as it is material, provides :

"Any defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim.....plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. If the court decides that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the court shall fix a date before which the plaint shall be amended in accordance with the court's decision and the deficit fee shall be paid....."

6. As the Hon'ble Supreme Court of India has held that issue regarding the deposit of Court-fee is between plaintiff and the Court and in case at the time of final decision the Court comes to the conclusion that Court-fee affixed is not adequate, Court can direct to deposit the court-fee required to be deposited in the facts and circumstances of the case.⁷

7. Learned counsel for the petitioners-defendants has not been able to distinguish the said judgment so as to project that present revision petition is maintainable.

8. At this stage, learned counsel for the petitioners-defendants raised an argument that jurisdiction of a Court is to be decided the suit on the basis of the relief sought.

9. In the present case, suit was already being tried by a competent Court of law and the amendment qua restoration of possession sought was allowed and only objection raised was qua the inadequacy of the Court-fee affixed. No objection was raised before the Court below that the said Court does not have jurisdiction to try the suit keeping in view the amendment allowed. In the absence of any argument raised with regard to the jurisdiction of the Court to try the suit, the same cannot be decided in the present revision petition especially, when challenge is to the rejection of the

application filed under Order 7 Rule 11 of the CPC qua the maintainability

of the suit. The question qua the jurisdiction of the Court is not the scope of the present revision petition and in case the petitioners-defendants have any grievance qua the jurisdiction of the Court to try the suit, they can avail an appropriate remedy before the appropriate forum.

10. Keeping in view the above, no ground is made out for interference by this Court and the present revision petition is accordingly dismissed.

May 10, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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