

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

134

2023:PHHC:151665

CR-1815-2022

Date of decision: 29.11.2023

UMED MALIK

..Petitioner

Versus

BALWAN SINGH

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jitender Nara, Advocate
for the petitioner.

ANIL KSHETARPAL, J(Oral)

1. In substance, the dispute involved in the present case is with regard to the liability to pay the ad valorem Court fee. The trial Court vide the impugned order has directed the plaintiff (petitioner herein) to affix the Court fee as per Section 7(ix) of the Court Fees Act, 1870 (hereinafter referred to as the '1870 Act'), the correctness of the aforesaid has been challenged in this revision petition.

2. It is the case of the petitioner that the respondent Sh. Balwan Singh executed the mortgage deed on 03.05.2018, while promising to pay Rs.50,00,000/- along with the interest at the rate of 2% per month during the mortgage period i.e. from 03.05.2018 to 05.11.2018 and redeem the rent. The petitioner claims that the respondent (defendant) has failed to pay the aforesaid amount and therefore, the conditional sale by mortgage has become absolute and consequently he is entitled to be recorded as an owner in the revenue record. He also sought relief of decree for possession of the property.

3. The trial Court has directed the plaintiff to pay the ad valorem Court fee on the amount of Rs.50,00,000/- in accordance with Section 7(ix) of the 1870 Act, which is extracted as under:-

***“7. Computation of fees payable in certain suits.—The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—
to redeem.— (ix) In suits against a mortgagee for the recovery of the property mortgaged,
to foreclose.— and in suits by a mortgagee to foreclose the mortgage, or, where the mortgage is made by conditional sale, to have the sale declared absolute according to the principal money expressed to be secured by the instrument of mortgage.”***

4. The learned counsel representing the petitioner contends that before filing the suit, the petitioner filed a petition under Section 7 and 8 of the Bengal Regulations Act XVII of 1806 (hereinafter referred to as the ‘1806 Act’). He submits that the aforesaid petition was disposed of as the respondent did not file reply. He submits that the defendant failed to comply with the order dated 11.07.2019, and therefore, the petitioner has become owner of the same. He submits that in this suit, the plaintiff has only sought decree of declaration that he is entitled to be recorded as an owner of the property in the revenue record and has sought decree for possession of the suit property, which is an agricultural land.

5. This Court has considered the submissions of the learned counsel representing the petitioner.

6. The learned counsel representing the petitioner has produced a copy of the final order passed by the Court in the petition filed under Section 7 and 8 of the 1806 Act, which reads as under:-

“Counsel for the respondent has made statement at bar that he has not to file any reply and he has given notice of the case to the respondent. Since the respondent is well aware about the petition filed against him, so, no further action is required in this petition under Section 8 of the Bengal Regulation Act. As such, file be consigned to the record room after due compliance”

7. From the aforesaid order, it is evident that the Court has not granted any declaration in favour of the petitioner. In substance, the petitioner is praying for the relief of foreclosure. As per the second part of Section 7(ix) of the 1870 Act, in a suit filed by mortgagee to foreclose the mortgage or where the mortgage is made by a conditional sale, to have the sale declared as absolute, the ad valorem Court fee is payable in accordance with the principal money expressed to be secured by the instrument of mortgage. In view of the aforesaid fact, there is no substance in the argument of the learned counsel representing the petitioner that no ad valorem Court fee is payable on the principal money expressed in the instrument of mortgage.

8. The learned counsel representing the petitioner relies upon the judgment passed in *Satpal Vs. Vinod Kumar and another, 2011(1) PLR 463.*

9. On a careful reading of the judgment, it is evident that the issue of liability to pay the ad valorem Court fee was not matter in issue before this Court.

10. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

11. Dismissed accordingly.

12. All the pending miscellaneous applications, if any, are also disposed of.

November 29th, 2023

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**(ANIL KSHETARPAL)
JUDGE**

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