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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Decided on : 03.08.2023

Raj Kumar

. . . Petitioner(s)

Versus

Dalbir Singh @ Balbir Singh and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Mohit, Advocate for
Mr. Sumit Sangwan, Advocate
for the petitioner(s).

Mr. S.K. Verma, Advocate
for respondent No.1.

SANJAY VASHISTH, J. (Oral)

1. Present revision petition has been filed by the petitioner – Raj Kumar (hereinafter referred to as ‘defendant No.1’) under Article 227 of the Constitution of India, for setting aside of order dated 17.07.2019 (P-1), passed by learned Addl. District Judge, Bhiwani; whereby, first appeal filed by defendant No.1, was dismissed, on account of not paying the *ad valorem* court fee.

2. Counsel for the petitioner submits that in a suit for possession by way of specific performance of contract, a decree dated 24.10.2017 was passed; whereby, defendant No.1 was directed to pay back double the amount of earnest money to the plaintiff (respondent No.1 herein) i.e. a sum of Rs.15,60,000/- along with interest @ 6% per annum.

3. Challenging the said decree, defendant No.1, filed first appeal before the Court of learned District Judge, Bhiwani, wherein, vide order dated 15.07.2019, defendant No.1 was granted one month time for paying

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the *ad valorem* court fee payable on the memorandum of said appeal.

However, on account of failure to deposit the said amount, vide impugned order dated 17.07.2019, appeal was dismissed. Hence, defendant No.1 (petitioner herein) is before this Court by way of present revision petition.

4. Petitioner's counsel refers to the order dated 22.08.2019, passed by this Court, which says as under:-

*“Present: Mr. Sumit Sangwan, Advocate
for the petitioner.*

*Issue notice of motion for 5.11.2019 **subject to the provisional deposit of the Court fee.**”*

5. Further, counsel produced the copy of order dated 04.09.2019, passed by learned District Judge, Bhiwani, referring to the filing of an application by the defendant for depositing of the *ad valorem* court fee provisionally, undoubtedly, in compliance to the order dated 22.08.2019, passed by the High Court.

6. Counsel for the petitioner also refers to the order dated 23.09.2019, passed by learned District Judge, Bhiwani, and submits that requisite *ad valorem* court fee of Rs.63,300/- (Rs. Sixty Three Thousand and Three Hundred only), was thereupon, deposited, as has also been recorded in order dated 23.09.2019. Net generated copies of the order dated 04.09.2019 & 23.09.2019, passed by learned District Judge, Bhiwani, which are produced during the course of hearing, by counsel for the petitioner (defendant No.1) in Court today, are taken on record, subject to all just exceptions. Office to tag the same at appropriate place.

For convenience, order dated 23.09.2019, is reproduced

hereunder:-

“Present: Sh. Mandeeep Godara, Advocate for the applicant/appellant.

The concerned Ahlmad has reported that court fee has been filed. I have also perused the application record. It accompanies a court fee of Rs. 63,300/- (Rupees sixty three thousand three hundred only). In obedience to the order dated 22.08.2019 passed by the Hon'ble Punjab and Haryana High Court at Chandigarh in CR-4984 of 2019 titled as 'Raj Kumar Versus Dalbir Singh @ Balbir Singh but subject to the final decision of the said revision petition by the Hon'ble Punjab and Haryana High Court at Chandigarh, the above stated court fee is provisionally taken on record. The application dated 04.09.2019 is disposed of accordingly. It be consigned to the record room and be attached therein with the main file.

Pronounced in open Court:

*(R.C. Dimri)
District Judge, Bhiwani.
UID:HR0054*

Date of Order: 23.09.2019”

7. Counsel for the petitioner (defendant No.1) informs the Court that once the required court fee has been deposited under the directions of this Court, he need not to challenge the impugned order dated 17.07.2019, earlier passed by the Appellate Court, except for seeking restoration of the appeal, as requisite court fee has already been deposited.

8. Counsel further informs that against the partial dismissal of the suit filed by the respondent No.1 (plaintiff), appeal is pending before the same Court i.e. First Appellate Court, which is also now fixed for

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11.08.2023. Thus, if the appeal filed by defendant No.1 (petitioner herein) is also decided on merits, nobody's right would be prejudiced.

9. In view of the circumstances discussed and recorded herein-above, and the fact that the appeal filed by respondent No.1 (plaintiff) is also pending before the same Court i.e. learned District Judge, Bhiwani, it would be in all fairness to consider, and decide the appeal filed by defendant No.1 (petitioner) also on merits. Thus, let both the appeals be decided together on the basis of its merits.

10. Thus, present revision petition is accepted by partially modifying the impugned order by which, the appeal filed by defendant No.1 (petitioner) was dismissed. The appeal filed by defendant No.1 (petitioner), which was dismissed on account of non-filing of *ad valorem* court fee, be restored back to its original stage, for the purpose of its decision on merits.

It is also made clear that in case of dismissal of the appeal filed by defendant No.1 (petitioner), he would not have any claim over the *ad valorem* court fee, which was deposited provisionally under the order of this Court.

Civil Revision Petition stands **disposed of** in above terms.

(SANJAY VASHISTH)
JUDGE

August 03, 2023

J.Ram

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