

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. No. 4178 of 2012

Manager, HDFC Bank Ltd.

-Versus-

Smt. Chanda Sharma & Ors.

For the Petitioners : **Mr. Debjit Mukherjee,
Mr. Amitava Mitra,
Ms. Antara Choudhury,
Ms. Sangamitra Mazumder.**

For the Opposite parties :

BEFORE

HON'BLE JUSTICE PRASENJIT BISWAS

Date:- 25.01.2024

Prasenjit Biswas, J:-

1. This revisional application has been filed by the defendant no.1/applicant under Article 227 of the Constitution of India whereby and where under the applicant has filed this writ application and prayed for quashing the Order No. 48 dated 12.10.2012 passed by the learned Civil Judge (Jr. Division), 1st Court, Durgapur, Paschim Bardhaman in connection with Title Suit No. 28 of 2009.

2. Facts leading to filing of this writ application in short is that the plaintiff filed T.S. No 21 of 2009 in the Court of Civil Judge (Junior Division) stating *interalia* that he purchased the impugned vehicle being Registration No. WB- 40H-9284 with financial assistance of the defendant no.1/ applicant namely HDFCBank

for an amount of Rs.3,60,000/- with EMI (equal monthly installments) of Rs.9,512/-and an agreement was executed in between this applicant defendant and the Plaintiff/O.P. and the plaintiff used to pay EMI as per contract regularly. But on 03.11.2008 the defendant Bank took possession of the impugned vehicle wrongly and forcefully and demanded sum of Rupees 2,78,450/- for release of the said vehicle in favour of the plaintiff/ respondent no.1. This O.P./ Plaintiff prayed for decree for declaration that the plaintiff is the registered owner of the impugned vehicle and also prayed for decree of permanent injunction restraining the defendant/ applicant bank from transferring/ selling ownership of the said vehicle and also further prayed for declaration that the plaintiff respondent no1 is legally entitled of the said impugned vehicle.

3. The applicant defendant no.1 Bank filed application before the trial court under Order 7 Rule 11 of CPC for rejection of the plaint on the ground interalia that this suit ought to have been valued at Rs. 2,78,450/- and requisite advlaorem court fees had to be paid, but the plaintiff/respondent no.1 did not value the suit properly. So, the plaint was insufficiently stamped and accordingly prayer was made for rejection of the plaint.

4. Learned Trial Court rejected the said petition filed under Order 7 Rule 11 read with Section 151 of CPC filed by the defendant no.1/ applicant by passing the impugned order.

5. In this case notice of this application was affected upon the respondent plaintiff no1 as it reveals from the affidavit of service filed on behalf of the petitioner but the plaintiff/ respondent no. 1 did not venture to appear in this case and none appears for him.

6. I have carefully heard the submission made by the learned Advocate for the applicant/ defendant no 1. Perused the contents of the application, certified copy of the impugned order and the materials available in the record.

7. Learned Advocate for the applicant defendant no.1 argued *inter alia* by reiterating the facts as stated in this application as well as contents of the application filed under Order 7 Rule 11 read with section 151 of CPC (annexure C)

8. It reveals from the contents of this application as well as Annexure 'C' that the plaintiff filed Title Suit being No. 21 of 2009 before the learned Civil Judge (Junior Division), 1st Court, Durgapur, Paschim Bardhaman stating *inter alia* and prayed for relief for declaration that the plaintiff is the registered owner of the impugned vehicle having registration no. WB-40H-9284 and also further declaration that the plaintiff is legally entitled to the possession of the said vehicle and also further prayed for passing an order restraining the defendant i.e. the present applicant permanently from selling and transferring the ownership of the said vehicle.

9. So, it is clear from the contents of this present application as well as Annexure 'C' that the plaintiff prayed for decree for declaration and permanent injunction. No prayer for relief is made by the plaintiff either for recovery of possession or for any mandatory injunction. So, as per Section 7(iv)(b) and (c) of Chapter -III of the W.B. Court Fees Act, 1970 that the amount of fee is payable (b) to obtain a declaratory decree or order, where consequential relief is prayed and (c) to obtain an injunction and in such suit the plaintiff shall state the amount at which the relief sought.

10. For the purpose of discussion, Section 7 of the West Bengal Court Fees Act, 1970 is reproduced herein below.

The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:

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*	*	*

(iv) In suits—

(a) for movable property where the subject-matter has no market value, as for instance, in the case of documents relating to title,

(b) to obtain a declaratory decree or order, where consequential relief is prayed,

(c) to obtain an injunction,

(d) for a right to some benefit (not herein otherwise provided for) to arise out of land, and

(e) for accounts—

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal subject to the provisions of section 11.

In all such suits the plaintiff shall state the amount at which he values the relief sought.

11. So, as per provision of the W.B. Court Fees Act that in a suit for declaration and permanent injunction Court Fees is to be paid according to the valuation made in the plaint. In this case the applicant defendant no.1 prayed for rejection of the plaint on the ground of non-payment of advalorem court fees but this is not a suit for relief for mandatory injunction or recovery of possession but simple suit for declaration and permanent injunction.

12. In this case learned Advocate of the applicant referred judgement passed by Hon'ble High Court of Chhattisgarh at Bilaspur in M.A. No. 42 of 2014 (Smt. Urvashi Bai Sharma and Another Vs. Smt. Indumati Sharma and Others) where Hon'ble High Court has observed inter alia in that judgement that to obtain a declaratory decree or order for an injunction court fees to be paid according to the amount at which the relief sought is valued in the plaint.

13. In view of the above facts and circumstances and discussion made above I am inclined to hold that the plaintiff respondent no. 1 has filed this suit for

declaration and permanent injunction and he has paid the court fees according to own valuation as stated in the plaint. So, I hold that the petition made by the defendant no.1 for rejection of the plaint as per provision of Order 7 Rule 11 of CPC for nonpayment of advalorem court fees is not sustainable.

14. In view of the circumstances, I hold that learned Trial Court has not committed any error or illegality in passing the impugned order no 48 dated 12.10.2012 in T.S. No 21 of 2009.

15. In result this application fails.

16. Thus, the application being no.4178 of 2012 filed by the applicant/defendant no.1 is hereby dismissed exparte but without an order of cost.

17. The impugned order no 48 dated 12.10.2012 passed by the learned Civil Judge (Junior Division), 1stCourt, Durgapur, Paschim Bardhaman in connection with Title Suit No. 21 of 2009 is hereby affirmed.

18. Interim order if any stands vacated.

19. Let a copy of this order be sent down to the Trial Court immediately for information.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)