

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****232****CR-4932-2017 (O&M)****Reserved on : 21.11.2024****Date of Decision : 10.12.2024**

Swaran Singh and Others

....Petitioners

VERSUS

Munish Mahajan and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Prateek Sodhi, Advocate for the petitioners.

Mr. Akhil Kashyap, Advocate for
Mr. P.K. Kataria, Advocate for the respondents.**ALKA SARIN, J.**

1. Present revision petition has been preferred under Article 227 of the Constitution of India for setting aside the order dated 09.05.2017 (Annexure P-8) vide which an application filed by the respondents for restoration of the appeal, which was dismissed vide order dated 23.04.2013 for non-furnishing of the requisite court fees, has been allowed.

2 The brief facts relevant to the present *lis* are that a suit for specific performance and possession was filed by the plaintiff-respondents on 20.02.2004. On 24.05.2004 the written statement was filed by the defendant-petitioners herein and a statement was made that they were ready to execute the sale deed. However, the sale deed was not executed on account of various issues raised by the plaintiff-respondents themselves. Taking into account all the said factors as well as pleadings and the evidence on the record, the suit was dismissed by the Trial Court vide judgment and

decree dated 28.07.2012. An appeal was preferred by the plaintiff-respondents on 10.10.2012, however, no court fees was affixed on the memorandum of appeal. The memorandum of appeal was not accompanied by any application for exemption from filing the court fees. On 22.01.2013 an application (Annexure P-1) for extension of time for depositing the requisite court fees was filed. A reply to the said application was filed by the defendant-petitioners herein and they also filed an application for rejection of the memorandum of appeal on the ground that no court fees has been affixed. A reply to the application was filed by the plaintiff-respondents herein. Vide order dated 21.03.2013 the application for extension of time for deposit of the court fees was allowed and the application filed by the defendant-petitioners herein for rejection of the memorandum of appeal was dismissed. The plaintiff-respondents herein were given one months' time from the date of the passing of order dated 21.03.2013 to affix the court fees on the memorandum of appeal. Since the court fees was not affixed as directed vide order dated 21.03.2013, the appeal itself stood rejected on 23.04.2013 (Annexure P-5). Subsequently, on 01.07.2013 an application was filed by the plaintiff-respondents for restoration of the appeal. The defendant-petitioners contested the said application and filed a reply. However, the said application was allowed and the appeal of the plaintiff-respondents was restored vide the impugned order dated 09.05.2017 (Annexure P-8). Hence, the present revision petition by the defendant-petitioners.

3. Learned counsel for the defendant-petitioners would contend that once time was granted for affixing the deficit court fees and the same was not complied with, thereafter, any application filed for restoration of the

appeal could not have been entertained. Learned counsel for the defendant-petitioners has relied upon a judgment of a Division Bench of this Court in the case of **M/s Ajey Taxtile & Ors. vs. The British India Corporation & Ors. [1970(2) ILR Punjab 127]** to contend that once the court fees was not affixed and the memorandum of appeal was insufficiently stamped the First Appellate Court was not bound to give time to the appellant to make good the deficiency in the court fees and here in the present case despite time having been granted the court fees was not affixed and hence, the restoration itself could not have been ordered. Further reliance has been placed upon the judgment of a Division Bench of this Court in the case of **Jabar Singh deceased represented by his Legal Representatives vs. Shadi deceased represented by his Legal Representatives [1978 PLR 681]** on the proposition that no opportunity to make good the deficiency in the court fee is called for in an appeal. Further reliance has been placed on the judgment of a Full Bench of this Court in the case of **Raj Kumar Alias Prithvi Singh vs. Amar Singh & Ors. [AIR 1981 Punjab 1]** also on the proposition that the First Appellate Court is not bound to call upon the appellants to make good the deficiency in the court fees and could straightway reject an appeal.

4. *Per contra* learned counsel for the plaintiff-respondents has relied upon a judgment of the Hon'ble Supreme Court in the case of **Mohammad Mahibulla vs. Seth Chaman Lal (dead) by LRs [AIR 1993 SC 1241]** to contend that a memorandum of appeal not sufficiently stamped should not be dismissed without giving an opportunity to make good the balance.

5. Heard.

6. In the present case the appeal preferred by the plaintiff-respondents challenging the dismissal of the suit by the Trial Court vide judgment and decree dated 28.07.2012 was filed without affixing any court fees on the memorandum of appeal nor was the memorandum of appeal accompanied by any application for exemption from filing the court fees. On 22.01.2013 an application (Annexure P-1) was filed for extension of time for depositing the requisite court fees. A reply was filed as also an application for rejection of the memorandum of appeal on the ground that the court fees was not affixed. Vide order dated 21.03.2013, the application for extension of time was allowed and the application for rejection of the memorandum of appeal was dismissed. The plaintiff-respondents were given one months' time from the date of passing of the order i.e. 21.03.2013 to affix the requisite court fees on the memorandum of appeal. Vide order dated 23.04.2013 (Annexure P-5) the appeal itself was rejected as the court fees was not affixed as directed vide order dated 21.03.2013. An application was filed on 01.07.2013 for restoration of the appeal, which was allowed vide the impugned order dated 09.05.2017. Aggrieved by the same, the present revision petition has been filed.

7. The argument of learned counsel for the defendant-petitioners that no further time as has been granted by the First Appellate Court while restoring the appeal for affixing the court fees could have been granted deserves to be accepted. A Division Bench of this Court in the case of **M/s Ajey Taxtile** (*supra*) has held as under :

“ 8. The latest judgment of the Madras High Court taking the same view is of Varadachariar and Pandrang Row, JJ., in Pamidimukhala Sitharamayya and others v.

Ivaturi Ramayya and another, AIR 1957 Punjab 317. The learned Judges of the Madras High Court also after considering a large number of previous cases came to the conclusion that the provisions of Order 7, Rule 11(c) of the Code of Civil Procedure do not apply to appeals and that the appellate Court is entitled to reject an appeal if the full court-fee has not been paid without calling upon the appellant to pay the deficient court-fee, because in so far as the memorandum of appeal was concerned, express provision has been made in Order 41 Rule 3 for its rejection on the grounds stated in that rule. After hearing the learned counsel for the parties at length and after careful consideration of the matter we are inclined to agree with the view taken by the Division Bench of the Madras High Court in Pamidimukhala Sitharamayya's case (supra). The provisions of section 107(2) have been expressly made subject to such conditions and limitations "as may be prescribed". In section 2(16) "prescribed" is stated to mean "prescribed by rules". Whereas specific provision has been made in Rule 11 Order 7 relating to plaints, no corresponding provision has been made to that effect in Order 41 of the Code which contains the entire relevant procedure relating to appeals. Agreeing with the reasoning on which the judgment of the Division Bench of the Lahore High Court was based, we do not appear to be bound to allow the appellants an opportunity to make up the

deficiency in court-fee after the expiry of the period of limitation for preferring the appeal particularly in a case where there is no dispute about the quantum of the court-fee payable, but the appellants have knowingly and deliberately paid deficient court-fee on the solitary ground that they were not possessed of sufficient funds to pay the requisite court-fee within the period of limitation. Since the petition of appeal did not bear the requisite court-fee, no proper appeal has in fact been filed in this case.”

Yet, again, in the case of **Jabar Singh** (*supra*) a Division Bench of this Court held as under :

“ 4. The learned counsel for the appellant urged the following two points :

(i) that before the Memorandum of Appeal was rejected, time ought to have been granted to the plaintiff-appellant to make good the deficiency.

(ii) that in any case opportunity to make good the court-fee ought to be given under section 149 of the Civil Procedure Code.

These contentions were raised before the learned Single Judge and repelled for detained reasons recorded by him after referring to two cases M/s. Ajey Textile and others v. The British Indian Corporation and others, I.L.R. Pb. Hary. 1970(2) 127, and S. Wajid Ali v. Mt. Isar Bani Urf Isar Fatma, AIR 1951 Allahabad 64. These points raised before us are concluded by the

judgment of a Division Bench of this court in case M/s. Ajey Textile and others. In this case, it was held :

"That the question whether poverty or inability of the appellant to pay full court-fee at the time of filing an appeal be regarded as a sufficient ground for the exercise of the discretion of Court in extending time under section 149 of Civil Procedure Code can be answered only with reference to the facts of a particular case. A mere allegation that a party is unable to pay court-fee on the date when he presents an insufficiently stamped document is not enough for the exercise of the discretion in his favour, but that if further circumstances are shown which satisfy the Court that the inability to pay court-fee has been caused by circumstances beyond the litigant's control, or if substantial amount of court-fee has been paid and a comparatively small amount remains to be paid thus showing the bona fides of the litigant, time may be extended.

That the provisions of Order 7, Rule 11(c) of the Code do not apply to appeals, and the appellate Court is entitled to reject an appeal if the full court-fee has not been paid, without calling upon the appellant to pay the deficient court-fee, because in so far as the memorandum of appeal is concerned, express provision has been made in

Order 41 Rule 3 for its rejection on the grounds stated in that rule. The appellate Court is not bound to allow the appellant an opportunity to make up the deficiency in court-fee after the expiry of the period of limitation for preferring the appeal particularly in a case where there is no dispute about the quantum of the court-fee payable, but the appellant has knowingly and deliberately paid deficient court-fee on the solitary ground that he is not possessed of sufficient funds to pay the requisite court-fee within the period of limitation."

5. xx xx xx

6. *The trial Court found the preliminary issues against Jabar Singh deceased, and directed him to affix the correct court-fee on the plaint, but in spite of this, the Memorandum of Appeal was not amended by him and the requisite court-fee was not paid. There being no properly constituted appeal before the learned Single Judge, as such the Memorandum of Appeal has been rightly rejected. The learned counsel could not point out any legal infirmity in the judgment of the learned Single Judge."*

A Full Bench of this Court in case of **Raj Kumar alias Prithvi Singh** (*supra*) held as under :

" 11. It would be evident from the above that in the predecessor High Court of Lahore as also within the jurisdiction of this High Court, judicial opinion has so

far been unanimous without a hint of dissent on the point that Order 7, Rule 11, Civil Procedure Code, is not applicable to the memoranda of appeals. The line of reasoning has held unbroken sway ever since the enforcement of the Civil Procedure Code for well nigh 72 years. Now apart from other things, on the principle of stare decisis we see no reason whatsoever to induct any note of dissent in the law which fortunately within this jurisdiction has remained settled. As has already been noticed it is not as if there is any unanimity of view in the other High Courts on the point and indeed as at present advised the weight of authority seems to be tilted on the side of the view we are inclined to take. It is well-settled that a view long held in the jurisdiction is not to be upset except on the patent grounds that the same is either palpably wrong or is of a kind that following it would be perpetuating an error and resulting in public mischief. That is indeed far from being the case here and, therefore, on well-settled principle we are inclined to conform to the long standing opinion within this Court itself as also in the predecessor Court of Lahore.

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15. I am, therefore, of the view that not even one out of the many considerations which can possibly impel one to take a view contrary to a long line of unbroken precedent is satisfied in this context. Therefore,

following the settled law within this jurisdiction we would answer the question posed at the very outset of this judgment in the negative and hold that sub-rule (c) of rule 11 of order 17 Civil Procedure Code, is not attracted in the case of the memoranda of appeal.”

In Mohammad Mahibulla's case (*supra*) relied upon by learned counsel for the plaintiff-respondents the Hon'ble Supreme Court held that if a memorandum of appeal is not sufficiently stamped an opportunity to make good the court fees ought to be given.

8. In the present case the appeal was initially filed without affixing the court fees. Subsequently, an application for extension of time for affixing the court fees was allowed and one months' time was granted. Even that order was not complied with. Having not complied with the order, the Court rightly rejected the appeal vide order dated 23.04.2013 (Annexure P-5). The law as laid down in the judgments referred to above is very clear that once the memorandum of appeal is not sufficiently stamped the appeal can be dismissed without giving an opportunity to make good the court fees. Hon'ble Supreme Court in the case of **Mohammad Mahibulla** (*supra*) has held that one opportunity ought to be given before dismissing the appeal for not affixing the court fees. In the present case the Court did give an opportunity, which was also not complied with. Once the opportunity given is not availed and complied with, the Court was left with no other option but to reject the appeal. Having done so on 23.04.2013 (Annexure P-5), there was no occasion for the First Appellate Court to restore the appeal vide the impugned order dated 09.05.2017 (Annexure P-8).

9. The First Appellate Court placed reliance on a decision by the Supreme Court in **A. Nawab John & Ors. vs. V.N. Subramaniam [2012 (3) RCR Civil 749]**. However, **A. Nawab John's** case (*supra*) arose out of proceedings before the Trial Court where the plaint was filed with deficit court fee and was returned on more than one occasion. In the said case the Trial Court had not given a time-frame for making good the deficiency in court fee but had simply returned the plaint unlike the present case where the First Appellate Court had granted a specific time to the plaintiff-respondents to deposit the court fee. The opportunity granted to the plaintiff-respondents was not availed and complied with and therefore the appeal was rejected. However, the First Appellate Court restored the appeal vide the impugned order without the court fee still being affixed by the plaintiff-respondents. Even the application for restoration of the appeal was not accompanied with the requisite court fee. The impugned order dated 09.05.2017 is unsustainable and suffers from errors patent on the record.

10. In view of the above, the impugned order restoring the appeal cannot be sustained. Accordingly, the present revision petition is allowed and consequently the impugned order dated 09.05.2017 (Annexure P-8) is set aside. Pending applications, if any, also stand disposed off.

10.12.2024
jk

(**ALKA SARIN**)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO