

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

CR-1979-2024 (O&M)
Reserved on : 03.04.2024
Pronounced on : 24.04.2024

GARIMA MANGLA

....Petitioner

VERSUS

MANGE RAM

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ravi Dutt Sharma, Advocate for the petitioner.

ALKA SARIN, J.

1. The present revision petition being filed under Article 227 of the Constitution of India challenges the order dated 11.03.2024 (Annexure P-7) passed by the learned Civil Judge (Junior Division), Guhla whereby the application under Order VII Rule 11 CPC filed by the defendant-petitioner for rejection of the plaint was dismissed.

2. The plaintiff-respondent herein filed a suit for mandatory injunction, damages and *mesne* profits under Sections 34 and 38 of the Specific Relief Act, 1963 as also under Order XX Rule 12 CPC. The defendant-petitioner filed an application for rejection of the plaint on the ground that the plaintiff-respondent was required to pay *ad valorem* court fee since relief of possession has been sought. A reply was filed to the said application. The application was dismissed vide impugned order dated 11.03.2024. Hence, the present revision petition.

3. Learned counsel for the defendant-petitioner would contend that the application ought to have been allowed as the suit was for

possession and by mere astuteness in drafting the plaintiff-respondent cannot be permitted to circumvent the affixation of proper court fee. In support of his argument, learned counsel for the defendant-petitioner has relied upon the judgments passed by this Court in **Ram Chander vs. Rattan Lal** [2002(2) RCR (Civil) 157]; **Moti Ram & Ors. vs. Smt. Kamlesh & Ors.** [2019(1) Law Herald 166]; **Jai Sai Ram Steel Pvt. Ltd. vs. Ramesh Singla** [2021(3) Law Herald 2410] and **Ganga Lal vs. Ved Parkash Kathuria & Ors.** [2022(1) PLR 583].

4. Heard.

5. In the present case the case set up in the plaint is that the defendant-petitioner was in unauthorized possession of the suit property since 11.07.2023. The suit itself was filed shortly thereafter. The Hon'ble Supreme Court in the case of **Joseph Severance & Ors. vs. Benny Mathew & Ors.** [2005(4) RCR (Civil) 559] has held that where the licensor has filed the suit with promptitude and if it is shown that within reasonable time the suit for mandatory injunction was filed, the said suit would be maintainable. However, where the licensor does not take prompt action to evict the licensee from the premises in such a case a suit for possession would lie. The argument of the learned counsel for the defendant-petitioner that the present being a suit for possession in effect and hence the plaintiff-respondent would be required to pay *ad valorem* court fee deserves to be rejected in view of the law laid down by the Hon'ble Supreme Court in the case of **Joseph Severance** (supra).

6. The ratio of the judgment in **Ram Chander's** case (supra) relied upon by the learned counsel for the defendant-petitioner would not be

applicable in the present case inasmuch as in the said case the suit was based on part performance under Section 53-A of the Transfer of Property Act, 1882 and since possession was being sought hence it was held that *ad valorem* court fee would be payable. The judgment in the case of **Moti Ram** (supra) was based on the concession given by the counsel and hence would have no applicability in the present case. The judgment in the case of **Jai Sai Ram Steel Pvt. Ltd.** (supra) was out of a suit for recovery where a definite amount was claimed and hence the same is totally distinguishable on facts. The judgment in the case of **Ganga Lal** (supra) is also distinguishable on facts. In the present case a perusal of the plaint would reveal that a notice was sent to the defendant-petitioner on 15.06.2023 revoking the license. However, the said notice was neither relied nor complied with and hence the suit was filed for mandatory injunction.

7. In view of the above, the impugned order dated 11.03.2024 cannot be faulted with. There is no illegality or irregularity in the impugned order. The present revision petition, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

24.04.2024

Aman Jain/Ankur

**(ALKA SARIN)
JUDGE**

*NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*