

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.2891 of 2023 (O&M)
Date of Order:22.05.2024

Smt. Reeta Bashamboo

Versus

Sh. Subhash Chander Kundra (since deceased) through LRs
and another

..Respondents

CR No.2892 of 2023 (O&M)

Reeta Bashamboo

Versus

Sh. Tilak Raj Kundra and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harsh Aggarwal, Advocate
for the petitioner.

Mr. Chanchal K Singla, Advocate
for the respondents.

ANIL KSHETARPAL, J

1. With the consent of the learned counsel representing the parties, two connected revision petitions shall stand disposed of by a common order.
2. The issue which arises for consideration is whether the ad valorem court fee is payable on the amount of mesne profit claimed for use and occupation of the premises during the pendency of the suit particularly when no arrears have been claimed with respect to the period prior to the suit?
3. The trial court has directed the plaintiff (petitioner) to pay ad valorem court fee on the amount of Rs.40,000/- per month as claimed in the



suit as mesne profit from the date of filing of the suit till April, 2023. The correctness of such order is challenged in these revision petitions.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

5. The learned counsel representing the petitioner submits that the amount of court fee with respect to the period during the pendency of the suit is not required to be paid on ad valorem basis. He submits that there is no provision in the Court Fee Act, 1870 (hereinafter referred to as 'the 1870 Act'), providing for payment of ad valorem court fee on the amount claimed for use and occupation of the premises during the pendency of the suit.

6. Per contra, the learned counsel representing the respondents while referring to Section 7(i) and (ii) of the 1870 Act, submits that in a money suit for maintenance and annuities, the other sums payable periodically, the ad valorem court fee is required to be paid on such value which shall be deemed to be 10 times of the amount claimed to be payable for one year.

7. This court has considered the submissions of the learned counsel representing the parties.

8. Section 7(i) and (ii) of the 1870 Act, are extracted as under:-

Section 7. Computation of fees payable in certain suits:-

(i) for money:-*In suits for money (including suits for damages or compensation or arrears of maintenance or of annuities, or of other sums payable periodically-according to the amount claimed;*

(ii) for maintenance and annuities;-

(a) in suits for maintenance and annuities or other sums payable periodically-according to the value of the subject



matter of the suit and such value shall be deemed to be ten times the amount claimed to be payable for one year;

(b) In suits for reduction or enhancement of maintainability and annuities or other sums payable, periodically-according to the value of the subject matter of the suit and such value shall be deemed to be ten-times the amount sought to be reduced or enhanced for one year).”

9. The plaintiff has filed the suit with the following prayers:-

“It is, therefore, respectfully prayed that a decree for mandatory injunction may kindly be passed in favour of the plaintiff and directing the defendant no.1 to handover the vacant and physical possession of entire first floor of House No.668, Sector 7, Panchkula consisting of three bed room (out of which two rooms are attached with toilets), one drawing room, one dining room, kitchen and temporary toilet on second floor etc. of House No.668, Sector 7, Panchkula to the plaintiff in favour of the plaintiff and against the defendant no.1 AND a decree for recovery of mesne profits @ Rs.40,000/- per month from the date of institution of the suit till the delivery of vacant and physical possession of entire First Floor of House No.668, Sector 7, Panchkula consisting of three bed room (out of which two rooms are attached with toilets), one drawing room, one dining room, kitchen and temporary toilet on second floor etc. of House No.668, Sector 7, Panchkula to the plaintiff along with pendent-lite and future interest @ 18% per annum may be passed in favour of the plaintiff and against the defendant no.1 along with a decree of permanent injunction restraining the defendant no.1 from parting with possession of the above premises in question in any manner to any third person except the plaintiff and performa



defendant/defendant no.2 may kindly be passed in favour of the plaintiff and against the defendant no.1 in the interest of justice.”

10. It is evident that the petitioner has sought decree for mandatory injunction and claimed mesne profit for use and occupation of the premises during the pendency of the suit which was filed in March, 2021. Hence, the liability of the plaintiff (petitioner) to pay ad valorem court fee on the amount to be calculated on the basis of Section 7(ii)(b) of the 1870 Act is in dispute. In the opinion of this court, Section 7(ii)(b) of the 1870 Act is not applicable in the present case. Sub-section(ii) of the 1870 Act is for maintenance and annuities and other sums payable periodically . In other words, it refers to the amount which became payable before the filing of the suit. Section 7(ii) clause (a) or (b) does not refer to the amount claimed during the pendency of the suit.

11. In **Naranjan Singh vs. Kartar Singh and others, 2002(2) RCR (Civil), 405**, a coordinate Bench held that the affixed court fee as provided under Section 11 of the Court Fee Act shall be payable on future mesne profits. In **Harish Chand vs. Som Nath and others 2013 (1) RCR (Civil) 367**, the court held that no ad valorem court fee is payable on the amount sought as in the mesne profit from the date of filing of the suit onwards. Para 9 of the judgment reads as under:-

“Plaintiff's version is that defendants were licensees in the suit property under the plaintiff and their license stands terminated. Consequently, the plaintiff is entitled to seek relief of mandatory injunction against the defendants and is, therefore, not required to pay ad valorem court fee on market value of the suit property, which is payable in a simple suit for possession of the suit

property. As regards mesne profits, the plaintiff has not claimed any amount of mesne profits for the period prior to filing of the suit. The plaintiff has claimed mesne profits since the date of filing of suit, for which separate court fee is not payable.

12. Keeping in view the aforesaid facts and discussion, the impugned orders are set aside.
13. Both the revision petitions are allowed.
14. All the pending miscellaneous applications, if any, are also disposed of.

May 22, 2024
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO