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

(120)

CR-6802-2024

Date of Decision: - 22.11.2024

Rajeev Singh

....Petitioner

Versus

Saeen Dass Ramphal

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Gaurav Jaglan, Advocate, for the petitioner.

VIKAS BAHL, J. (ORAL)

1. Present revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 20.07.2024 (Annexure P-5) passed by the Civil Judge (Junior Division), Gurugram whereby the application under Order VII Rule 11 CPC has been dismissed.

2. Learned counsel for the petitioner/defendant has challenged the impugned order to the extent that the application filed by the petitioner under Order 7 Rule 11 CPC has been dismissed. Two arguments regarding the same have been raised. The first point which has been agitated is that the suit does not disclose proper cause of action and that in the plaint each and every date when the cause of action arose has not been mentioned. It is further submitted that the said point was raised by the petitioner in the application dated 20.07.2024 (Annexure P-3) in para 4. The second ground of challenge to the impugned order is that the

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Court fee which was liable to be affixed on the plaint in the present case was on the amount of Rs.3,17,00,000/-, which has not been affixed and the trial Court after having observed that the Court fee on the said amount is to be affixed, has further observed that since the respondent was a senior citizen and as per him, he had spent all his earnings on this purchase due to which he had nothing left with him, at this stage the Court fee was not warranted to be affixed. It is further submitted that the application filed by the petitioner under Order 7 Rule 11 CPC was meritorious and thus, the same should be allowed and the plaint should be rejected.

3. This Court has heard learned counsel for the petitioner and has perused the paper-book and is of the opinion that the order dated 20.07.2024 passed by the Civil Judge (Jr. Division) Gurugram is in accordance with law and deserves to be upheld, for the reasons which are detailed herein after.

4. The respondent had filed a suit for declaration to the effect that the plaintiff/respondent was the owner of the property in question i.e. residential Plot bearing No.282, Block-B, measuring 180 sq. mtrs. (215 sq. yards approximately) in the residential colony known as Sushant Lok, Phase-I, situated in District Gurugram, to the extent of 62% share. A consequential relief for permanent injunction restraining the defendant from selling and alienating the land in question and to create any kind of charge in the suit land was also prayed. Another prayer for grant of decree of mandatory injunction was also sought. The suit was filed on the

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pleadings that the plaintiff was a 79 years old senior citizen and that the defendant/petitioner was a property dealer and was in partnership with the previous owner of the property in question. It was averred that since the plaintiff wanted to purchase the property, he came in the contact with the defendant and the defendant assured the plaintiff that he will help the plaintiff in buying the property in question and also stated that even he wanted to be a shareholder in the said property and had shown himself as partner with the previous owner vide partnership agreement dated 11.07.2015 and had also assured the plaintiff that he had every right to deal with the property in question. The deal was stated to be finalized vide MoU executed on 11.12.2022 for a total consideration of Rs.3,17,00,000/-. The share of the plaintiff was fixed as 75% and the share of the defendant was fixed as 25% and copy of the said MoU dated 11.12.2022 was attached along with the plaint. It was further the case of the plaintiff in the plaint that a sum of Rs.35,00,000/- was paid through cheque and cash, to the defendant and the date of execution of sale deed of the property was fixed as 10.03.2023 and since the sale deed of the property in question was not executed, a fresh MoU was executed between the parties and as per the said MoU, the share of the plaintiff was fixed as 62% and the share of the defendant was fixed as 38% in the property and the copy of the said MoU dated 07.09.2023 was attached alongwith the plaint.

5. Importantly, in para 9 of the plaint, it was stated that till 31.10.2023, the plaintiff/respondent had paid a total sum of

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Rs.3,17,00,000/- to the defendant in respect of the suit property through cheque/bank transfer as well as in cash and that nothing was due against the plaintiff towards the sale consideration and the present petitioner/defendant had acknowledged the said payments vide various receipts, copies of which were attached alongwith the plaint. The names of the witnesses who had attested the MoU were also specifically mentioned in para 10 of the plaint. It was further stated that the present petitioner/defendant in collusion with his partner had transferred the said property in his favour illegally and unlawfully from the funds received from the plaintiff and whereas, it was the the plaintiff/respondent who was the bona fide purchaser of the property. It was stated that after coming to know about the said facts of execution of sale deed in favour of the petitioner, the respondent even approached the present petitioner who had assured him that he would transfer the said property in favour of the respondent within a short span of time but in spite of lapse of sufficient period, the defendant had been lingering on the matter. It was averred that the defendant on the basis of the said sale deed wanted to alienate the suit property and in case he does so, then, the respondent/plaintiff would suffer irreparable loss and injuries.

6. In the plaint, it was fairly stated by the plaintiff that the defendant had transferred a sum of Rs.10,00,000/- in the account of the plaintiff and had given another amount of Rs.25,00,000/- to the plaintiff's family members in his absence. In para 17 of the plaint, it was stated by the plaintiff that he had called upon the petitioner/defendant to admit his

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claim and also not to interfere in the peaceful possession of the plaintiff in respect of the land in question and not to further sell the property but the defendant continued to avoid and ignore the plaintiff on one pretext or the other and the defendant about one week back, finally refused to accede to the legal and genuine request of the plaintiff and thus, the suit was instituted.

7. A perusal of the plaint (Annexure P-1) clearly discloses a cause of action. It is the case of the plaintiff that he had paid the entire amount of Rs.3,17,00,000/-, which he was to pay as per the MoU entered into between the parties. Even in case the amount of Rs.10,00,000/- and Rs.25,00,000/- as repayment by the petitioner is taken into consideration, then also, it is apparent that a substantial amount as per the case of the plaintiff is still with the present petitioner. Moreover, a further perusal of the plaint would show that there is a mention of specific dates with respect to the agreement/MoU, the payments made alongwith documentary proof, as well as the fact that one week prior to filing of the suit, the defendant had finally refused to accede to the legal and genuine request of the plaintiff. Thus, the plea raised by the petitioner in para 4 of the application to the effect that neither the suit discloses proper cause of action nor mentions specific dates when the cause of action arose, is meritless and deserves to be rejected. Moreover, a perusal of the impugned order would show that no argument on the aspect of cause of action has been raised by the petitioner before the trial Court.

8. The second plea which has been raised by learned counsel for



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the petitioner is with respect to the inadequate Court fee attached with the plaint. The trial Court in the impugned order has observed that the respondent-plaintiff is a senior citizen and as per his case, all his earnings have been spent on this agreement and he has nothing left for survival and is thus not able to affix the Court fee and accordingly, a lenient view has been taken by the trial Court by considering the age and the plea regarding the financial condition of the respondent/plaintiff and has further observed that the Court fees could be directed to be affixed in the decree, if passed, in favour of the plaintiff/respondent and has further made it clear that the decree, if any, passed in favour of the plaintiff, would be subject to the payment of Court fees and the affixation of Court fees at this stage is not warranted. The trial Court has thus not discharged the respondent-plaintiff from paying the Court fee but has only kept the same in abeyance. Moreover, a plaint is liable to be rejected when the plaintiff does not affix the Court fee within the time, as required by the Court. In the present case, no such direction has been given by the trial Court, at this stage, so as to make out a case of non-compliance on the part of the plaintiff, making the plaint liable to be rejected.

9. It would be relevant to note that a Co-ordinate Bench of this Court in case titled as “*Arun Kumar Goyal Vs. Payal Aggarwal, reported as 2013(4) R.C.R. (Civil) 93*”, had observed that no revision would lie at the instance of the defendant against the decision on the question of inadequacy of court fee as the question of non-payment of Court fee is a dispute between the litigant and the Registry. Reliance in



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the said judgment was placed upon various judgments. Paras No.9 and 10 of the said judgment are reproduced as under: -

*“9. Admittedly, the dispute is of the court fee. Learned counsel for the respondent before raising any argument on the merits of the case has raised a preliminary objection that no revision is maintainable in case of payment of court fee. It has been held in various judgments that the question of non-payment of court fee is a dispute between the litigant and Registry whether it arises at the stage of presentation of plaint or the ap peal and the respondent is normally not interested in such a dispute. As per ratio of judgment in case titled **Shamsher Singh v. Rajinder Prashad, 1973 PLJ 686**, revision or appeal can be filed if there is a dispute of jurisdiction. In case the question of jurisdiction is not involved then revision cannot be filed. This issue was interpreted by the Kerala High Court in **Vasu v. Chakki Mani, AIR 1962 Kerala 84** wherein it was held that no revision will lie against the decision on the question of inadequacy of court fee at the instance of the de fendant. The judgment of Apex Court in **Sri Rathnavarmarajas case (supra)** was also followed by the Full Bench of this Court in **M/s. Arjan Motors v. Girdhara Singh and others, 1978 PLJ 36**. As per Full Bench judg ment of this Court it was held that question of court fee cannot be agitated by the litigants in a petition under section 115 of the Civil Procedure Code.*

*10. The present case is squarely covered by a judgment of Full Bench of this Court rendered in **M/s. Arjan Motors case (supra)**. Accordingly, in view of the facts as mentioned above and the settled position of law in case of payment of court fee, no revision is maintainable.*

Dismissed.

Revision Dismissed”



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10. No contrary judgment has been cited by learned counsel for the petitioner. Thus, the present revision petition at the instance of the petitioner, who is a defendant in the suit, on the aspect of Court fee, is not maintainable. Moreover, at any rate, even on merits, this Court is of the view that the view taken by the trial Court does not call for interference by this Court in exercise of its revisional jurisdiction.

11. Keeping in view the above-said facts and circumstances, this Court is of the view that the impugned order has been correctly passed and deserves to be upheld and the revision petition filed by the petitioner being meritless deserves to be dismissed and is accordingly dismissed.

November 22, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes