IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

279

Civil Revision No.2791 of 2019
Date of decision: April 7th, 2026

Kiran

.....Petitioner

Versus

Parmod and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Deepak Girotra and Mr. Chetan Sharma, Advocates for the petitioner.

Mr. Parveen Kaushik, Advocate for the respondents.

VIKAS BAHL, J. (ORAL)

1. This is a civil revision petition under Article 227 of the Constitution of India for setting aside the impugned order dated 02.04.2019 whereby the application under Order VII Rule 11 CPC filed by the respondents has been allowed.

2. The plaintiff has filed the present revision petition challenging the order dated 02.04.2019 vide which the plaintiff has been directed to pay *ad valorem* Court fee on the mortgage amount. A perusal of the impugned order would show that it has been noticed by the trial Court that a mortgage deed No.3670 dated 08.08.2014 was registered at the office of Sub Registrar, Bahadurgarh and the plaintiff had mortgaged the suit land as detailed in para 1 of the plaint to the defendants for mortgage amount of ₹20,75,000/- and thereafter had filed a suit for declaration and permanent injunction to get the said registered mortgage deed set aside and cancelled. It was further observed that since the plaintiff had not affixed the Court fee, thus, an

application was filed by the respondents-defendants for rejection of the plaint under Order VII Rule 11 CPC. After hearing the arguments of the parties concerned, the trial Court observed that the said mortgage deed was a registered document and was executed by plaintiff-Kiran in favour of defendants Parmod and Dharmender in lieu of the mortgage amount of ₹20,75000/- and a challenge was made to the said mortgage deed and since the plaintiff was a party to the said mortgage deed, the plaintiff was liable to pay Court fee on the mortgage amount i.e. on the amount of ₹20,75,000/-. In support of the said observations, reliance was placed upon the judgment of the Hon'ble Supreme Court in the case of ***Suhrid Singh @ Sardool Singh Versus Randhir Singh, 2010(12) SCC 112.*** Accordingly, the application was allowed and the plaintiff was directed to pay *ad valorem* Court fee on the mortgage amount.

3. The Hon'ble Supreme Court in the abovesaid case has held as under:

> "*6. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to A' and 'B' two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if `B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void*

> *and non- est/ illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If B who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs.19.50 under Article 17(iii) of Second Schedule of the Act. But if 'B', a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under Section 7(iv)(c) of the Act. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7."*

4. Before this Court, it is not disputed that the petitioner was a party to the said mortgage deed. Even the observations of the trial Court to the effect that the same was executed in lieu of the mortgage amount of ₹20,75,000/- has not been disputed, although it has been argued by the counsel for the petitioner/plaintiff that as per the suit filed by the petitioner/plaintiff, it was her case that the said mortgage deed had been entered into on account of force and coercion. It is further argued that the

application for rejection of the plaint has been filed on 21.08.2017, whereas, the suit was filed on 31.10.2014 after much delay. The question as to whether there was coercion in executing the mortgage deed is a matter to be determined by the trial Court at the stage of final adjudication. Since it is not disputed that the petitioner-plaintiff was a party to the mortgage deed and as per the mortgage deed, the mortgage amount was ₹20,75,000/-, thus, as per the law laid down by the Hon'ble Supreme Court in the case of ***Suhrid Singh @ Sardool Singh (supra)***, the petitioner-plaintiff being an executant of the mortgage deed, which is sought to be annulled, would be required to pay *ad valorem* Court fee. Further a perusal of Order VII Rule 11 CPC would show that it does not provide for a timeline in which the application is to be filed. Moreover, no law has been cited before this Court to show that an application filed under Order VII Rule 11 CPC after a period of more than two years and nine months from the date of the institution of the suit is required to be dismissed solely on the said ground of delay.

5. The Hon'ble Supreme Court in the case of ***Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil*** reported as ***(2010) 8 Supreme Court Cases 329***, had observed that the High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of court or tribunal subordinate to it. It was also observed in the said judgment that a statutory amendment with respect to Section 115 of the Civil Procedure Code does not and cannot cut down the ambit of High Court's power under Article 227 but at the same time, it must be remembered that

such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. It was also observed that the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline.

6. Keeping in view the above, this Court is of the opinion that the impugned order does not call for any interference by this Court while exercising its powers under Article 227 of the Constitution of India and accordingly, the impugned order dated 02.04.2019 is upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

7. At this stage, learned counsel for the petitioner has requested that the petitioner be granted time to deposit the said amount.

8. In view of the fact that the present revision petition has been pending since 2019, this Court grants the petitioner four weeks to deposit the amount in accordance with the impugned order.

April 7th, 2026 **(VIKAS BAHL)**
Puneet **JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes