

(2013) 04 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 7677 of 2010

Arun Kumar Goyal

APPELLANT

Vs

Payal Aggarwal

RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Citation : (2013) 04 P&H CK 0007

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Advocate : Arun Bansal, for the Appellant; Divanshu Jain, for the Respondent

Judgement

Daya Chaudhary, J.—The present revision petition has been filed for quashing of order dated 8.9.2010 passed by the learned Additional Civil Judge (Senior Division), - Kurukshetra vide which the application filed by the defendant for directing the plaintiff to affix the ad valorem court fee on the plaint has been dismissed. The plaintiff filed a suit for specific performance of agreement to sell dated 8.3.2006 and in the alternative, he claimed a relief of double amount of earnest money in case specific performance could not be issued. The plaintiff had affixed court fee on major relief i.e. for possession by way of specific performance and accordingly ad valorem fee of Rs. 64,370/- was affixed but no court fee on the double of the amount of earnest money was affixed.

2. An application was moved by the defendant-respondent for issuing direction to the plaintiff to affix the ad valorem court fee on the plaint which was dismissed vide order dated 8.9.2010.

3. The order dated 8.9.2010 is subject matter of challenge in the present revision petition.

4. Learned counsel for the petitioner has challenged the impugned order by raising various grounds as the court fee was affixed of Rs. 64,370/- on the amount of Rs. 15 lacs which was sale consideration under agreement. The alternative relief for recovery of Rs. 26 lacs which was double of the earnest

money was there. An application was moved for direction to affix ad valorem fee on the amount of Rs. 26 lacs. Learned counsel for the petitioner has relied upon the judgments rendered in S.Rm.Ar.S.Sp. Sathappa Chettiar Vs. S.Rm.Ar.Rm. Ramanathan Chettiar, , Indrajit Behera and Another Vs. Bhaja Meher and Another, and Radha Charan Das Vs. Th. Mohini Beharaji Maharaj and Others, in support of his contentions.

5. Learned counsel for the respondent has raised a preliminary objection that the matter is with regard to payment of court fee and the dispute was between the plaintiff and the Court and as such the defendant is not doing to be effected in any manner. Learned counsel also submits that in view of ratio of judgments in Full Bench in case titled Arjan Motors Malout Partnership Firm Vs. Girdhara Singh and Others, , no revision petition is maintainable. As per ratio of Full Bench, the petitioner cannot use Article 227 of the Constitution of India as a devise to challenge the order as revision petition is not maintainable. Learned counsel for the respondent also relies upon the judgments rendered in Appukuttan Vs. Kamalakshi, Yuv Raj and Others Vs. Balwant Singh and Others, and Gurmit Singh v. Gurcharan Kaur and others, C.R. No. 6775 of 2012, decided on 15.11.2012.

6. Heard arguments of learned counsel for the parties and have also gone through the impugned order as well as other documents on the file.

7. Admittedly, the plaintiff filed a suit for specific performance of contract, dated 8.3.2006 and has affixed ad valorem court fee on an amount of Rs. 15 lacs which was agreed sale price of the suit property. There was an alternative prayer clause that in case specific performance cannot be granted due to some technicalities or reasons, in that eventuality, the defendant be directed to pay double the amount of the earnest money. In the present case, the main relief of the plaintiff is for seeking specific performance of contract for which she has affixed appropriate court fee. For second relief, the question of court fee comes into operation only when it is found that specific performance cannot be granted. The application filed by the defendant was dismissed on the ground that there is no need to affix the court fee on the alternative prayer at this stage and application was dismissed.

8. 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 appeal and the respondent is normally not interested in such a dispute. As per ratio of judgment in case titled Shamsheer Singh Vs. Rajinder Prashad and Others, 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 Vs. Chakki Mani, 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

defendant. The judgment of Apex Court in Sri Rathnavarmaraja's case (supra) was also followed by the Full bench of this Court in Arjan Motors Malout Partnership Firm Vs. Girdhara Singh and Others, As per Full Bench judgment of this Court it was held that question of court fee cannot be agitated by the litigants in a petition u/s 115 of the CPC. The present case is squarely covered by a judgment of Full Bench of this Court rendered in M/s. Arjan Motors's 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.