
(2012) 03 P&H CK 0129
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 7822 of 2009

Hukam Chand

APPELLANT

Vs

Tej Pal and Another

RESPONDENT

Date of Decision : 23-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 35B
Constitution of India, 1950 — Article 227

Citation : (2012) 03 P&H CK 0129

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : Amit Prashar, for the Appellant;

Final Decision : Allowed

Judgement

L.N. Mittal, J.—Plaintiff Hukam Chand by way of instant revision petition filed under Article 227 of the Constitution of India has impugned order dated 11.9.2009 passed by learned Civil Judge (Junior Division), Faridabad thereby dismissing suit of the plaintiff-petitioner u/s 35B of the CPC (in short, CPC). None has appeared for contesting respondent No. 1 whereas respondent No. 2 was ex parte in the trial court and his service has been dispensed with in this revision petition.

2. I have heard Learned Counsel for the petitioner and perused the case file.

3. Plaintiff filed suit for declaration and permanent injunction inter alia challenging sale deed dated 26.3.2001 executed by defendant No. 1 in favour of defendant No. 2. Trial court on application Annexure P/2 moved by defendant No. 1 under Order 7 Rule 11 CPC directed the plaintiff to pay ad valorem court fee. Time for payment of ad valorem court fee was extended by the trial court vide order dated 12.8.2009 for 20 days. However the plaintiff - petitioner failed to pay ad valorem court fee even within said extended period. Therefore, trial court vide impugned order dated 11.9.2009 dismissed the suit u/s 35B CPC due to non-

payment of ad valorem court fee. Feeling aggrieved, plaintiff has filed this revision petition.

4. At the out set it has to be noticed that the trial court has erroneously dismissed the suit u/s 35B CPC for non-payment of ad valorem court fee. Section 35B CPC applies to non-payment of costs of adjournment. However, in the instant case, the plaintiff was to pay requisite court fee on the plaint and was not to pay cost of adjournment to the opposite party. Consequently, section 35B CPC was not applicable and trial court wrongly invoked the same. On the other hand Order 7 Rule 11 (b) and (c) CPC was applicable because the plaintiff on being required by the court to pay requisite court fee failed to do so and therefore, under the said provision, the plaint should have been rejected.

5. Counsel for the petitioner prayed that the petitioner - plaintiff may be granted another opportunity to pay requisite court fee as earlier the petitioner could not pay the requisite court fee on account of paucity of funds.

6. I have carefully considered the matter. In my considered opinion, ends of justice would be met if this prayer of counsel for the petitioner is accepted subject to payment of costs. The petitioner failed to pay requisite court fee within the time originally stipulated by the trial court and also within the extended time granted by the trial court. However, the petitioner is now ready to pay the requisite court fee. He should be allowed to do so on payment of costs.

7. For the reasons aforesaid, the instant revision petition is allowed. Impugned order dated 11.19.2009 of the trial court is set aside. The suit is restored to the files of the trial court. Plaintiff - petitioner shall pay the requisite court fee in the trial court on or before 31.5.2012 subject to payment of Rs 2500/- as costs precedent to defendant/respondent No. 1. If requisite court fee is so paid by the plaintiff - petitioner, the trial court shall proceed with the suit in accordance with law. If the plaintiff fails to pay the requisite court fee on or before 31.5.2012, the plaint shall be deemed to have been rejected. Petitioner is directed to appear in the trial court on 16.4.2012.