

(2013) 10 P&H CK 0198
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 6556 of 2013

M/s. Ambey Boilers and Fabricators	Vs	APPELLANT
M/s. Vina Paras Modern Rice Mills Pvt. Ltd. and Others		RESPONDENT

Date of Decision : 29-10-2013

Acts Referred:

Citation : (2013) 10 P&H CK 0198

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

Bench : Single Bench

Advocate : Rajesh Bansal, for the Appellant;

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—In this revision petition filed by the plaintiff under Article 227 of the Constitution of India, challenge is to order dated 14.10.2013 (Annexure P-1) passed by the trial court, thereby allowing application (Annexure P-3) filed by defendant no. 5 under Order 7 Rule 11 of the CPC (in short-CPC) for rejecting the plaint due to nonpayment of proper court fee. Plaintiff in the suit has inter alia claimed mandatory injunction directing defendants no. 1 to 5 to comply with agreement dated 06.05.2011, for purchase of machinery and in the alternative, seeking declaration that plaintiff is entitled to loss/damages/expenses and also maintenance charges @ Rs. 500/- per day, besides seeking permanent injunction.

2. Defendant no. 5, in his application, alleged that the suit for mandatory injunction to comply with the agreement is not maintainable because only suit for specific performance of the alleged agreement is maintainable or in the alternative, the plaintiff could file suit for recovery of damages for breach of contract. It was pleaded that value of the machinery has been determined at Rs. 3.39 crores by the plaintiff, and therefore, plaintiff is liable to pay ad valorem court fee thereon.

3. Plaintiff, by filing reply (Annexure P-4), contested the application and controverted the averments made therein. Various other pleas were also raised.

4. Learned trial court, vide impugned order (Annexure P-1), has directed the plaintiff to pay ad valorem court fee on amount of Rs. 3.39 crores and also on quantified amount of damages, claimed by the plaintiff. Feeling aggrieved, the plaintiff has filed this revision petition to challenge the said order.

5. I have heard counsel for the petitioner and perused the case file.

6. Counsel for the petitioner contended that the plaintiff-petitioner cannot file suit for specific performance of the impugned agreement in view of Section 14 of Specific Relief Act, 1963. It was also argued that plaintiff is not liable to pay ad valorem court fee, as directed by the trial court.

7. I have carefully considered the aforesaid contention, which cannot be accepted.

8. The plaintiff, by seeking relief of mandatory injunction directing defendants no. 1 to 5 to comply with the impugned agreement, is directly seeking the relief of specific performance of the agreement. Consequently, the plaintiff has to pay ad valorem court fee on sale consideration mentioned in the agreement. Besides it, the plaintiff has also claimed damages and amount of maintenance. The plaintiff has to pay ad valorem court fee on the said relief also. However, since the said relief has been claimed in the alternative, the plaintiff has to pay ad valorem court fee on the higher amount, out of the two amounts i.e. the amount of sale consideration for relief of specific performance or the amount of damages and maintenance claimed by the plaintiff in the alternative.

9. In the aforesaid circumstances, except clarification regarding payment of ad valorem court fee on higher of the two amounts, as mentioned in the preceding paragraph, there is no perversity, illegality or jurisdictional error in the impugned order passed by the trial court so as to warrant interference by this Court in exercise of power of superintendence under Article 227 of the Constitution of India. The plaintiff is liable to pay ad valorem court fee, keeping in view the relief sought by him. The revision petition lacks any merit and is accordingly dismissed in limine. On payment of ad valorem court fee, the suit shall be treated to be suit for specific performance of the agreement and in the alternative, suit for recovery of money by way of damages and maintenance.