

(2016) 01 P&H CK 0331
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 8008 of 2014 (O&M)

Ram Ghanshyam Developers Private Limited	APPELLANT
Vs	
Sanjeev Kumar and Others	RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 7, Order 9 Rule 2, Order 9 Rule 3, Order 9 Rule 4, Section 149, Section 151, Section 2(2)

Citation : (2016) 1 PLR 833

Hon'ble Judges : K. Kannan, J.

Bench : Single Bench

Advocate : Ashok Aggarwal, Senior Advocate and Alok Jain, for the Appellant; Ashish Chopra, for the Respondent

Final Decision : Disposed off

Judgement

K. Kannan, J.—1. The plaint filed for injunction was resisted on several grounds including the plea of limitation and the maintainability of the suit, besides an objection regarding payment of courts fee. The Court consigned the ground of limitation and the maintainability for deeper consideration later, but made a direction for payment of court fee within a particular date. The court fee was not paid before the stipulated date and the plaint was ordered to be rejected in the manner contemplated under Order 7 of the Code of Civil Procedure (short "the Code"). The petitioner appears to have filed an application under Order 9 Rule 4 of the Code originally seeking for restoration and when it was dismissed, came by means of a revision before this court but withdraw the same and filed an application before the same court seeking restoration on the same ground. The Court again dismissed it. The revision has been brought before this Court. The respondents have an objection that when a plaint is rejected but it is in the nature of "decree" in terms of Section 2(2) of the Code and the revision itself is not competent. Under the normal circumstances, I would have directed the plaintiff to approach the lower appellate court for an appeal, if the matter related to a challenge on the correctness of the order rejecting the plaint. That is not the

issue before me. The petitioner is prepared to accept that the rejection consequent to non-payment of court fee was justified but only that there was mis-communication between the counsel of the parties and he did not know the date before when the court fee had to be paid. The matter cannot, therefore, be understood as a challenge to the order of rejection of the plaint but it must be understood as rejection of a plea for reception of court fee beyond the time.

2. It is, however, doubtful, whether an application under Order 9 Rule 4 of the Code was competent. The said provision could be invoked only when the suit is dismissed under Order 9 Rule 2 or 3 of the Code. The non-payment of court fee contemplated under Order 9 Rule 2 of the Code is the court fee for summons and not court fee for the suit. Order 9 Rule 3 of the Code could also be invoked only when an order is passed for nonappearance of the party. In this case, dismissal has occasioned on account of non-compliance of the direction of payment of court fee for the relief claimed in suit. The proper procedure would have been only to file an application for extension of time for payment of court, fee and as a consequence recall the order rejecting the plaint. The petition to extend the time for payment of court fee could have been filed only under Section 149 of the Code and to recall the order of rejection by invoking inherent jurisdiction under Section 151 of the Code. Any order passed under Section 149 or 151 of the Code are not appealable order and only revision could have been maintained. I read the application filed as an application filed under Section 149 read with Section 151 of the Code and direct the petitioner to pay the court fee within a period of one week from the date of receipt of a copy of this order. The order rejecting the plaint for consequence of non compliance is recalled and the plaint is ordered to be restored to its original position. It will be treated as if instituted on the date as it was originally treated.

3. The respondents' objection is also as regards the maintainability and limitation as not being considered on merit and it is stated that it would require further consideration. The finding of the court below already that the objection regarding maintainability or failure to disclose the cause of action is not correct and that the issue of limitation would require a further probe and that they cannot be considered now. I vacate these findings and direct the trial court to consider the issue of maintainability, for, there exists a prima facie objection that would require to be considered. The plaintiff, who purports to hold an agreement, has chosen not to file a suit for specific performance but he has sought for a declaration that a particular sale deed executed by the vendor is not valid. There is an objection taken regarding the locus standi of the plaintiff to seek for such a relief. It is surely a tenable objection and would require consideration for rejection, which is barred by law. Even the issue of limitation which is an admitted facts on the expression stated in the plaint would require to be considered and only mixed question of facts and law might be consigned for a consideration on different stage. The Court will examine the objection as regards the limitation and may take a fresh decision without in any way being fettered by the earlier observations made. The revision petition stands disposed of with the

above observations.