

(2013) 04 P&H CK 0060

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2515 of 2013

Sarabjit Kaur

APPELLANT

Vs

Avtar Singh and Others

RESPONDENT

Date of Decision: April 22, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11

Citation: (2013) 171 PLR 242

Hon'ble Judges: Daya Chaudhary, J

Bench: Single Bench

Advocate: Maharaj Kumar, for the Appellant;

Final Decision: Dismissed

Judgement

Daya Chaudhary, J.

The present revision petition has been filed for setting aside the order dated 25.1.2013 passed by Civil Judge (Junior Division), Dera Bassi vide which the application moved under Order 7 Rule 11 CPC for rejection of plaint has been conditionally allowed and the plaintiff-petitioner was directed to append the court fee by the next date of hearing. Briefly, the facts of the case are that the petitioner filed a civil suit for mandatory injunction directing the respondents to pay an amount of Rs. 10 lacs for her marriage ceremony. The claim of the plaintiff in the suit was that she is adopted daughter of the defendants as the defendants were not having any issue but thereafter a male child was born. The plaintiff being neglected by the defendants and she is residing with Hakam Singh who is real brother of Avtar Singh, adopted father of the petitioner.

2. The application was moved under Order 7 Rule 11 CPC for rejection of the plaint on the ground of non payment of ad valorem court fee as no suit for mandatory injunction can be filed for recovery of any amount and the same is liable to be dismissed on this ground alone.

3. The said application was allowed conditionally and the plaintiff was directed to append court fee vide order dated 25.1.2013 which is subject matter of challenge in the present petition.

4. Learned counsel for the petitioner has challenged the impugned order only on the ground that the petitioner will pay the court fee on the actual amount assessed by the Court but the application moved by the defendants has wrongly been accepted.

5. Heard arguments of learned counsel for the petitioner and have also perused the impugned order and other documents on the file.

6. In the present case, the question is only of affixation of court fee and not of jurisdiction. In judgment titled [Shamsher Singh Vs. Rajinder Prashad and Others](#), it has been observed that where the question is involved of jurisdiction, then revision or appeal can be filed but where question of jurisdiction is not involved then no revision or appeal lies. In case titled [Sri Ratnavaramaraja Vs. Smt. Vimla](#), the Apex Court held that whether proper court fee has been paid or not is primary question between the plaintiff and the State and no revision lies. In one judgment of Kerala High Court in [Vasu Vs. Chakki Mani](#), it was held that no revision will lie against the decision on the question of adequacy of court fee unless the question of jurisdiction is involved. In Full Bench judgment of Allahabad High Court in case [Gupta and Co. Vs. Kripa Ram Brothers](#) it was held that decision in the trial of a suit as to the amount of court fee, is not an independent proceeding and, not open to revision. Similarly in AIR 1934 396 (Oudh) it was held that an order demanding deficit court fee from the plaintiff was not open to challenge. In another judgment in [Kamal Engineering Works Vs. Ashwani Kumar and Others](#), it was held as under:

Mere decision given by a court in the trial of a suit as to the amount of court fees payable does not amount to a "case decided" nor it is necessarily an irregularity in procedure or illegality or refusal to exercise jurisdiction and therefore, no revision against such an order is competent. Moreover, it is an interlocutory order and as such not open to revision. The decision on preliminary issue regarding the court fees does not result in deciding the whole suit and does not amount to a decision of the court.

In view of the aforesaid discussion, the present revision petition being devoid of any merit is hereby dismissed.