

(2014) 05 P&H CK 0266

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 3741 of 2014 (O&M)

Yashvir Saini

APPELLANT

Vs

Parikshit and Others

RESPONDENT

Date of Decision: May 27, 2014

Acts Referred:

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

Citation: (2014) 176 PLR 416

Hon'ble Judges: Bharat Bhushan Parsoon, J

Bench: Single Bench

Advocate: Rahul Vats, Advocate for the Appellant

Final Decision: Dismissed

Judgement

Dr. Bharat Bhushan Parsoon, J.

Invoking supervisory powers of this Court under Article 227 of the Constitution of India, order (Annexure P-1) dated 21.3.2014 of the lower court whereby the application of the petitioner-defendant under Order VII Rule 11 CPC for rejection of the plaint for being allegedly insufficiently stamped was declined, has been impugned in this civil revision petition.

2. Hearing has been provided to the counsel for the petitioner while going through the paper book.

3. In response to a suit for specific performance of agreement dated 15.10.2006, the petitioner-defendant was required to file written statement but had been postponing the same. Instead of filing the written statement, an application under Order VII Rule 11 CPC was filed by the defendant (now petitioner) for rejection of the plaint, claiming that since valuation of the suit for the purposes of court fee and jurisdiction had been assessed by the non-applicant/respondent/plaintiff at Rs.

30,95,000/-, court fee of Rs. 1,28,170/- was required to be paid.

4. This application was resisted by the non-applicant/respondent/plaintiff claiming that the requisite court fee had already been deposited for which a certificate issued by the State Bank of India for deposit of an amount of Rs. 1,28,170/- as court fee, had been duly appended.

5. Since it is not disputed that the non-applicant/respondent/plaintiff had filed the suit for specific performance of the agreement with non-judicial stamp receipt for an amount of Rs. 1,28,170/-, there was no sidetracking the matter by him. Plea of the applicant/petitioner/defendant that non-judicial stamp receipt cannot be considered for the purposes of affixation of court fee has been specifically dealt with by the lower court in the impugned order, relevant portion whereof is as under:

After having heard learned counsel for both the parties and after having perused the case file, this court has arrived at the conclusion that the application in hand deserves dismissal and no case is made out for rejection of the plaint under Order 7 Rule 11 of CPC because it is an admitted fact that at the time of filing of the present suit the respondents have placed on the file non-judicial stamp receipt for the amount of Rs. 1,28,170/-. Learned counsel for the applicant has failed to satisfy this court that as to why the said amount which has been deposited by the respondent cannot be considered to be court fee specially when it has been issued for the purpose of court fee. Despite a specific query made by the court, learned counsel for the applicant could not satisfy this court that what material difference was going to make if the said amount of court fee has been deposited against a non-judicial stamp paper which has been issued under the head of court fee or in the alter nature the said amount was deposited under different head because in both the eventualities the respondents were required to deposit the amount in the Government account though under different heads. Hence, there is no justification in allowing the present application and as such application stands dismissed.

6. Even if plea of the applicant/petitioner/defendant that non-judicial stamp receipt cannot be counted towards court fee, after adjudication is found to be correct, rejection of the plaint even then would not be the consequence, because the non-applicant/respondent/plaintiff would be given time to make up deficiency in the court fee.

7. It is rather to be noticed that the application was moved merely to delay and dilate the proceedings particularly when written statement was not being furnished even after seeking many adjournments by the petitioner/defendant.

8. Keeping in view the totality of above facts and circumstances, by affirming the impugned order (Annexure P-1), this civil revision petition, being without any merit, is dismissed.

9. Nothing observed above shall have any bearing on the merits of the suit.