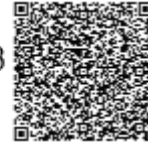




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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CR-4067-2016

Reserved on : 17.12.2024

Pronounced on : 31.01.2025

Anil Kumar and Others

.....Petitioners

Versus

Maninderbir Singh

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. G.C.Shahpuri, Advocate
for the petitioners.

Mr. Harmanjit Singh, Advocate
for the respondent.

Mr. P.P.Chahar, Advocate (Amicus Curiae).

SURESHWAR THAKUR, J.

1. Through the filing of the instant civil revision, the petitioners herein pray for the quashing/setting aside of the order dated 27.05.2016 (Annexure P-7), as passed by the learned Addl. Civil Judge (Sr. Division) Bilaspur, District Yamuna Nagar, whereby, the petitioners have been directed to pay the ad-valorem court fees on the civil suit concerned, wherein, the plaintiff has claimed relief for cancellation of the contract/agreement to sell.

Factual Background.

2. The petitioners/plaintiffs therein, had filed a suit under Section 27 of the Specific Relief Act, 1963, whereby, they claimed the rendition of a decree for rescinding the contract/agreement to sell dated



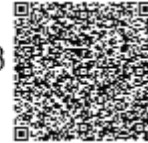
07.05.2010, as became executed by them, in favour of the defendants. The said agreement to sell was drawn in respect of land measuring 10 kanals 1 marlas out of land measuring 10 kanals 9 marlas, comprised in Khewat No.1332 Kittas 3, as per mutation No. 4273, 4386, 4723, situated near Radha Swami Satsang Bhawan, Bilaspur, including shiv mandir constructed over an area of 200 Sq. Yards. The total sale consideration in respect of the supra suit lands became comprised in a sum of Rs. 79, 40,000/-.

3. The further relief as claimed by the plaintiffs in the said civil suit was for forfeiture of the earnest money, as has been paid by the defendant to the plaintiffs, thus under the supra agreement to sell, with a consequential relief of permanent injunction, rather restraining the defendant from forcibly and illegally dispossessing the plaintiff from the above mentioned land.

4. When the said suit was fixed for the evidence of the plaintiffs, the defendant-respondent filed an application under Order 7 Rule 11 praying therein, for the passing of a direction, upon, the plaintiffs to pay ad-valorem court fees on the value of the agreement, failing which the plaint be rejected. The said application became disposed of vide order dated 27.05.2016 (Annexure P-7) with a direction to the plaintiffs, to affix ad valorem court fees on the total sale consideration as detailed in the agreement to sell. The relevant part of the impugned order is extracted hereinafter.

1. Arguments on the application under Order 7 Rule 11 CPC advanced. Heard. The present application has been filed on the ground that the plaintiff has not filed the ad

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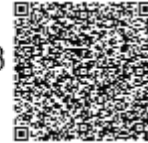


valorum Court fee inspite of the fact that he has sought the rescinding/cancellation of agreement to sell dated 07.05.2010 wherein the total sale consideration of the property has been shown to be Rs. 79,40,000/-. To substantiate his contentions, learned counsel for the applicant/defendant has relied upon N.N. Estate Private Limited Vs. Surinder Goyal, 2012 (5) RCR (civil) 591. The perusal of the case file shows that the plaintiff filed the suit for rescission/rescinding/cancellation of agreement to the contract of the agreement to sell dated 07.05.2010. In (N.N.Estate Private Limited Vs. Surinder Goyal, Supra) Hon'ble Punjab & Haryana High Court has observed that when the party has sought the cancellation of the agreement advalorem Court fee is to be deposited by the party. The observation of Hon'ble High Court in para No. 8 of the judgment is reproduced as under :-

Hence, in view of the aforementioned authority of the Hon'ble Apex Court as petitioner-plaintiff is seeking cancellation of agreement to sell executed by him in favour of respondent-defendant, he is required to pay advalorem Court fee on the consideration stated in the document, i.e., in the agreement to sell."

2. *Learned counsel for the applicant-defendant has argued that the present judgment is not applicable to the peculiar of the facts and circumstances of the present case as in the judgment relied upon by learned counsel for the defendant, the party had alleged that the agreement to sell is illegal, null and void and not enforceable upon it. However, in the present case, the plaintiff has not alleged the agreement to sell to be illegal, null and void. The plaintiff is seeking the cancellation of the same on the ground failure of the defendant to perform his part of contract. Heard. **Though, very intelligent arguments have been advanced by learned counsel for the plaintiff/respondent but these arguments are of no***

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assistance to the plaintiff because in para no.9 of the judgment it has been clearly mentioned by the Hon'ble High Court that though the party has sought the declaration of the agreement to sell as illegal, null and void but in material the party is seeking the cancellation of the agreement to sell. Meaning thereby, Hon'ble High Court was of the view that the party has to file the advelorum Court fee not only when the party has sought the cancellation of the same but also when though in form the party has sought the declaration of the agreement to be illegal, null and void but in material the declaration is nothing but the cancellation of the same i.e. the parties are always required to file the advelorum Court fee when the cancellation of agreement to sell is sought by them.

3. *In the present case, the plaintiff has sought the cancellation of the agreement to sell dated 07.05.2010 in which the sale consideration of the property has been shown to be Rs.79,40,000/- and hence, he is directed to file the advelorum Court fee on the ground of Rs. 79,40,000/-. With these observations, the present application stands disposed of. Now. To come up on 04.07.2016 for making of the deficiency of the Court fee and further proceedings.”*

5. Feeling aggrieved from the aforesaid order, the petitioners have filed thereagainst the instant civil revision.

6. It has been averred in the civil revision that, the learned trial Court while passing the impugned order, had failed to consider the fact that the plaintiffs rather were only seeking the passing of a decree thus rescinding the agreement to sell, thus on the ground of failure of the respondent to perform his remaining part of the apposite contractual obligation, whereas, the petitioners-plaintiff therein, were not seeking

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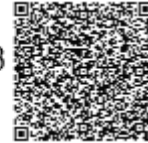
any relief of declaration for declaring the agreement to be illegal, null and void, therefore, they were not required to pay the ad valorem court fee on the amount of the agreement to sell.

7. Since there was a difference of opinion on the said issue, inasmuch as, some of the Benches have taken a view that if the plaintiff seeks declaration to the effect that the agreement to sell has come to an end, thereupon, he is required to pay ad-valorem court fee on the total sale consideration, whereas, some Benches have reached at a conclusion that agreement to sell is not an instrument of title, and, therefore, ad-valorem court fee is not payable on the plaint.

Accordingly, when the case was listed for hearing on 07.11.2017, before the learned Single Judge, thus the hereinafter extracted substantial questions of law became formulated for renditions of a decision thereons by a larger Bench.

"(i) Whether or not the plaintiff, who is party to a subsisting agreement to sell would be required to affix ad-valorem Court fee if the relief prayed for in the suit is in essence cancellation of the agreement to sell either in terms of Section 27 of the Specific Relief Act, 1963 or otherwise?

(ii) Whether or not in a suit for declaration filed by the plaintiff, who is party to the agreement to sell wherein assertions in the plaint shows that the agreement to sell has come to an end due to its non-performance by either of the party or by lapse of time and the money stands forfeited, ad-valorem Court fee is required to be affixed by the plaintiff and whether court fee is required to be affixed on the amount of earnest money received which is being forfeited or on the total sale consideration?



(iii) *Whether a suit for declaration filed by a non-executant of the agreement to sell is required to affix ad-valorem court fee, on the value of the property?*

8. Resultantly the instant larger Bench has been constituted under the orders of Hon'ble the Chief Justice, thus for rendering an answer to the hereinabove formulated substantial questions of law.

9. The judgments wherein the Hon'ble Benches of this Court, have taken a view that ad-valorem Court fee is payable on the plaint are as under :-

Civil Revision No. 1223 of 2015 titled as Harinder Singh Sidhoo and Others Vs. Varinder Pal Singh

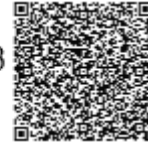
[4]. Trial Court vide order dated 18.11.2014 accepted the application after noticing the fact that the plaintiffs being the executants of the agreement to sell were liable to pay the ad valorem court fee. In view of ratio of *Suhird Singh @ Sardool Singh vs. Randhir Singh and others, 2010(2) Civil Court Cases, 510 (SC)*, if the executants want to avoid the deed, they have to sue for cancellation of the deed and have to pay the ad valorem court fee on the consideration specified in the deed itself.

[5]. By relying upon *Om Parkash vs. Smt. Bimla Devi and others, 2014(3) Law Herald 2238*, Learned counsel for the petitioners sought to argue that in case the declaration is sought in respect of gift deed, obtained by fraud, then provision of Section 7(iv)(c) of the Court Fee Act would apply and the plaint is not required to be affixed with ad valorem court fee

[6]. I have heard learned counsel for the petitioners.

[7]. Perusal of the plaint does not show any ground of fraud pleaded by the plaintiffs. Evidently, only agreement to sell was executed and the plaintiffs have already received the amount of Rs.51,00,000/-as earnest money. The possession was already

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with the plaintiffs and now by way of the suit in question, the plaintiffs want annulment of the agreement to sell.

[8]. In my considered opinion, the plaintiffs are liable to pay the ad valorem court fee as they being the executants of the agreement to sell are liable to pay the ad valorem court fee on the consideration received by them. The precedent cited by the learned counsel is distinguishable in view of the fact and circumstances of the case, particularly when in the case in hand, there was no plea of fraud taken by the plaintiffs. Factum of agreement to sell has been admitted in the pleadings. The plaintiffs wanted to avoid it only on the ground of readiness and willingness on the part of the defendant.

[9]. In view of above, I deem it appropriate to dismiss the present revision petition being totally devoid of merits.

Civil Revision No. 3600 of 2010 titled as N.N.Estate Private Limited Vs. Surinder Goyal.

9. *Though in the present case, petitioner-plaintiff has sought relief of declaration that agreement to sell executed by him in favour of the respondent-defendant is illegal, null, void and not enforceable upon him, however, a careful perusal of the plaint shows that petitioner-plaintiff is seeking cancellation of agreement to sell executed by him in favour of respondent-defendant. Law is well settled that litigant cannot be permitted to mould the relief to save court fee. Real intention of the plaintiff and the relief sought by him is to be found out from the contents of the plaint to decide question of court fee. It has been so held by Full Bench of this Court in **Niranjan Kaur v. Nirbigan Kaur, (1982) PLR 127**, relevant paragraphs of which reads as under:-*

"7. It is well settled that the Court in deciding the question of Court fee should look into the allegations made in the plaint to find out what is the substantive relief that is asked for. Mere astuteness in drafting the plaint will not be allowed to stand in the way of the Court looking at the substance of the relief asked for. Thus, in each case, the Court has to find out the real relief claimed by the plaintiff in the suit. Where the main relief is that of cancellation of the deed, and the declaration, if any, is only a surplusage, the case would not be covered under Section

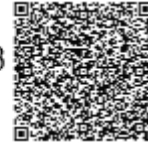
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7(iv) (c) of the Act, because in a suit under that clause the main relief is that of a declaration and the consequential relief is just ancillary. In this respect, reference may again be made to Mt. Zeb-ul-Nisa's case (*supra*), wherein it has been observed as follows:- `

It seems obvious that the consequential relief referred to in Section 7(iv)(c) could not mean a substantive relief, the valuation of which is separately provided for in the Court Fees Act. If it were so held, a plaintiff could easily evade payment of the necessary Court-fee on the substantive relief by prefacing it with a declaration as to his rights. Every suit involves the establishment of certain rights of the plaintiff as a necessary preliminary to the grant of the relief claimed by him. But the addition of a prayer for a declaration as to such rights cannot convert a suit for a substantive relief into one for a declaratory decree where consequential relief is prayed for within the meaning of Section 7(iv)(c) Court-fees Act. It is significant that the valuation of the relief in cases falling within the scope of Section 7(iv)(c) is left to the plaintiff. This is presumably because the `consequential relief' contemplated by the section is some ancillary relief to which the plaintiff becomes entitled as a necessary result of the declaration, but for which no separate provision is made in the Act. The essence of the relief in such cases lies in the declaratory part and the consequential relief being merely an auxiliary equitable relief, its valuation seems to have been left to the plaintiff. The meaning of the expression `consequential relief' and used in Section 7(iv)(c ), Court-fees Act, was recently considered by a Full Bench of the Allahabad High Court (consisting of five Judges) in Kalu Ram v. Babu Lal, 54 All. 812 and it was held that the expression `consequential relief' means some relief, which would follow directly from the declaration given the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in the Act and cannot be claimed independently of the declaration as a `substantial relief'. It follows, therefore, that if the relief claimed in any case is found in reality to be tantamount to a substantial relief and not a mere `consequential relief' in the above sense, the plaintiff must pay Court-fee on the substantial relief.'

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8. *It is the common case of the parties that in case the main relief in the suit is held to be that of cancellation of the sale-deed, then the case is not covered by Section 7(iv)(c) and the only provision applicable is Article 1, Schedule I of the Act. In order to bring the case under Section 7(iv)(c) of the Act, the main and substantive relief should be that of a declaration and the consequential relief should be ancillary thereto. Moreover, if no consequential relief is claimed or could be claimed in the suit, then Section 7(iv)(c) will not be attracted. Section 7(iv)(c) clearly contemplates suits to obtain the declaratory decree or order where consequential relief is prayed. It further provides that in all such suits, the plaintiff shall state the amount at which he values the relief sought. A further proviso has been added thereto by the Punjab Act No.33 of 1953, which reads as follows:-*

'Provided further that in suits coming under sub-clause (c), in cases where the relief sought is with reference to any property such valuation shall not be less than the value of the property calculated in the manner provided for by clause (V) of this section.'

9. *In a suit to obtain declaratory decree where no consequential relief is prayed, sub-clause (iii) of Article 17 of Schedule II of the Act, will be applicable, but the suit filed by the plaintiff-petitioner was virtually, to all intents and purposes, for the cancellation of the sale deed, executed by her, in favour of the defendant-respondent. She cannot claim possession unless the said deed is cancelled by a decree of the Court. To say in the plaint, that it be declared that the sale deed, got executed from her as a result of the fraud, was void and not binding on her, does not convert the suit into one for a declaration with the consequential relief of possession so as to fall within the provisions of Section 7(iv) (c) of the Act. To such a suit, the only article applicable Article I, Schedule I of the Act, and for that proposition, further support can be had from a Full Bench decision of the Allahabad High Court in Kalu Ram's case (supra), also wherein as regards the valuation of the relief as to the cancellation of the alternation, it has been held that such a relief falls neither under Section 7(iv)(c) nor under Schedule II Article (iii), but under the residuary article 1 Schedule I of the Act."*

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10. *In view of the aforementioned facts, it cannot be said that any illegality or material irregularity has been committed by learned trial Court in passing the impugned order or that a grave injustice or gross failure of justice has occasioned thereby, warranting interference by this Court.*

10. A similar view as declared in the verdicts (supra) has also been taken by the Hon'ble Benches in case **CR-5290-2008** titled as **Himat Singh @ Mita Vs. Om Parkash and Others** and in case **CR-5463-2008** titled as **Jaswant Singh Vs. Achhra Singh and Another**.

11. On the other hand, the verdicts, wherein, the Hon'ble Benches of this Court, have taken a view that ad-valorem Court fees, is not payable under Article 1 Schedule 1 of the Court Fees Act, 1870, thus on the plaint, are as under :-

Civil Revision No. 3095 of 1986, titled as Raj Singh Vs. Deepak Kumar, reported in AIR 1988 Pb. 83

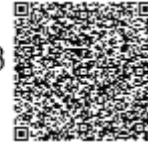
3. *In the present case, there is no document of title. Agreement to sell or mortgage of the value of property more than Rs. 100 do not create title in the property and they only remain agreements till they are enforced. The moment the registered document is executed, title in the property, either by sale or by mortgage, is created. Therefore, I am of the considered view that a suit for getting a declaration that an agreement of sale, mortgage etc. was never entered into between the parties or was otherwise null and void, would be maintainable and such a matter would not come within the ambit of Article 1, Schedule 1 of the Court Fees Act.*

4. *The learned counsel for the defendant was not able to show any judgment that to avoid an agreement ad valorem court fee under Article 1, Schedule 1 of the Court Fees Act would be payable. Unless the defendant is able to succeed in this behalf, it cannot be said that the plaint was not properly stamped.*

Civil Revision No. 4261 of 2012 titled as Sanjeev Kumar and Another Vs. Harnek Singh and Others.

Admittedly, there is no prayer for recovery of possession. There have been no transfer of title under the agreement and the declaration that

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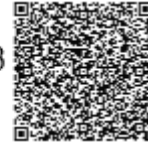
the agreement must be taken as cancelled would not under any circumstance require Court fee to be paid on the value of the property as mentioned in the agreement.

The counsel for the petitioners points out to me a judgment, N.N. Estate Private Limited Vs. Surinder Goyal, (2011 (3) PLR 140, which took a contrary view. I am afraid I may not be able to agree with the decision for the Court has applied the judgment in Suhrid Singh @ Sardool Singh Vs. Randhir Singh, 2010 (2) RCR (Civil) 564, that expressly dealt with the effect of cancellation plea in a suit where there was also a prayer for recovery of possession. We do not confront such a situation here. Yet another reference in the said judgment is to Niranjan Kaur Vs. Nirbigan Kaur, (1982) PLR 127 (FB), that dealt with the duty of Court to look through the pleadings and find the actual character. Consequential relief on cancellation of the document could itself be a needless surplusage and therefore the Court has to see the essence of the relief in the suit. The said judgment considered the effect of the cancellation of the sale deed which is not the same thing as cancellation of an agreement, for, a sale constitute a transfer of title while an agreement does not. The decision was also a suit relating to cancellation of a sale deed as having been brought about the result of the fraud and other vitiating circumstances. The said judgment will also not apply to a case involving the declaration that an agreement has stood cancelled by non-fulfilment of the obligations. The Court was also making further reference to the judgment of the Hon'ble Supreme Court in Surya Dev Rai Vs. Ram Chander Rai 2003(6) SCC 675 that considered the extent of supervisory jurisdiction exercised by the Court. It will have no relevance for our purpose. The Court fee paid is correct and it would require no intervention.

12. Further, it is necessary to refer to a judgment rendered by the Hon'ble Apex Court in case titled as **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and Others**, reported in **2010 (2) RCR (Civil) 564**, relevant paragraphs whereof are extracted hereinafter.

6. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and

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declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' -- two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and non- est/ illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of Second Schedule of the Act. But if 'B', a non- executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under Section 7(iv)(c) of the Act. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7.

7. In this case, there is no prayer for cancellation of the sale deeds. The prayer is for a declaration that the deeds do not bind the "co-parceners" and for joint possession. The plaintiff in the suit was not the executant of the sale deeds. Therefore, the court fee was computable under section 7(iv)(c) of the Act. The trial court and the High Court were therefore not justified in holding that the effect of the prayer was to seek cancellation of the sale deeds or that therefore court fee had to be paid on the sale consideration mentioned in the sale deeds.

13. Before proceeding to render an answer to the questions (supra), it is important to allude to the hereinafter extracted relevant



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portions of the plaint, as became instituted before the civil Court concerned by the plaintiffs.

2. That the defendant had agreed to purchase land measuring 10 Kanals 01 Marlas out of total land measuring 10 Kanals 09 Marlas (i.e. suit land) from the plaintiffs in a total sum of Rs.79,40,000/- (Rupees Seventy Nine Lacs Forty Thousand) along with constructed Shiv Mandir in the area of 200 Sq. Yards on 7.5.2010 and on the proposal of the defendant, the plaintiff became ready to sell the above said land to the defendant on the above said sale consideration.

3. That in this regard an agreement to sell was executed on 7.5.10 between the plaintiffs and the defendant and the defendant had paid an amount of Rs.40,000/- in cash and Rs.7,60,000/- vide cheque No. 039157 dated 28.5.10 drawn on State Bank of India Ambala City. As such the plaintiffs had received Rs.8,00,000/- (Rupees Eight Lacs) as earnest money from the defendant at the time of execution of the agreement to sell dated 7.5.10 in the presence of the witnesses and the plaintiffs had executed an agreement to sell on 7.5.10 in favour of the defendant and they had also executed a receipt of Rs.8,00,000/- received by them as earnest money from the defendant in the presence of witnesses and all the terms and conditions of the agreement to sell were read over to both the parties as well as marginal witnesses by the scribe and both the parties as well as witnesses put their signatures after hearing, understanding, and accepting all the terms and conditions of the same to be true and correct. As such both the parties to the agreement to sell are bound by all the terms and conditions of the agreement to sell.

4. That the defendant had paid Rs. 4,00,000/- as part payment to the plaintiffs and thereafter on 23.10.10 and the plaintiffs had also paid Rs.4,00,000/- more as part payment to the plaintiffs. As such the plaintiffs had received total sum of Rs.16,00,000/- out of total sale consideration of Rs. 79,40,000/- upto 23.12.10 from the defendant and an endorsement and

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receipt of Rs. 16,00,000/- by the plaintiffs from the defendant upto 23.12.10 was executed by the plaintiffs in favour of the defendant on 23.12.10 and the plaintiffs had executed and registered sale-deeds of 185 Sq. yards at the instance of the defendant on the basis of agreement to sell dated 7.5.10. Thereafter, the defendant had paid on 28.3.11 Rs. 30,00,000/- as part payment from the total sale consideration of Rs.79,40,000/- in addition to Rs. 16,00,000/- and the plaintiffs had executed an endorsement and receipt of Rs. 30,00,000/- in favour of the defendant in the presence of witnesses. As such the defendant had paid Rs. 46,00,000/- to the plaintiffs out of total sale consideration and the plaintiffs had executed and registered the sale-deed of plot no. 12, 13, 14, 15, 16, 17, 24, 25, 26, 27 for total area 200 Sq. Yards on the asking of the defendant and these facts fully incorporated in the said endorsement executed by the plaintiffs in favour of the defendant.

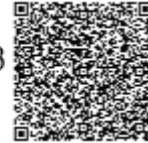
5. *That the last date for execution and registration of the sale-deed was fixed 30.03.2011 and the defendant is bound to get executed and registered the sale deed of the land in question in his favour or in favour of his choice person after making payment of balance sale consideration by adjusting the total amount paid by him from the total sale consideration of Rs.79,40,000/- as per the terms and conditions of the agreement to sell in question.*

xxxxx

8. ***xxxx The plaintiffs so many times requested the defendant to perform his part of agreement and contacted and requested the defendant to come present before Sub Registrar, Bilaspur for execution and registration of the land in question on payment of balance sale consideration. The defendant assured to the plaintiff that he will definitely get executed and registered the sale deed of the land in question upto 30.3.11 on payment of balance sale consideration. The plaintiffs waited the defendant in the office of Sub Registrar, Bilaspur in whole day but the defendant did not turn up on 30.3.11 till working hours to perform his part of agreement to get registered the***

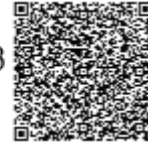


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sale deed of the land in question on payment of balance sale consideration. After waiting sufficient time till working hours the plaintiffs got marked their presence of readiness and willingness to perform their part of the agreement by way of an affidavit, which was attested by Executive Magistrate on 30.3.11. As such the defendant totally failed to perform his part of the agreement. So, the amount paid by the defendant to the plaintiffs shall be forfeited and the agreement dated 7.5.10 stands cancelled xxxxxxxx”

14. Therefore, the supra underlined paragraph of the agreement to sell assumes utmost importance, as the therein stated date inasmuch as 30.03.2011, is the contractually agreed date qua on the said date, the registered deed of conveyance becoming executed between the contracting parties. In other words, therebys, time was the essence of the contract, as became entered into between the parties. Furthermore, if the said imperative covenant appertaining to time being the essence of the contract, thus became violated at the instance of the present defendant, thereupons, if the present defendant was ready and willing to perform his part of the contractual obligation. Resultantly the said readiness and willingness of the present defendant to perform his part of the contractual obligation rather would have acquired some validity, only if he had filed a suit for specific performance against the present plaintiff. Since the present defendant did not do so, thereupons, his contending in the written statement that he was ready and willing to perform his part of contractual obligation but is an ill raised contention. Moreover, the said contention is also an after thought but prima facie, merely to ill estop the petitioner-



plaintiff to claim the rendition of decree for rescinding the agreement to sell besides prima facie, to ill estop the petitioner-plaintiff to claim the rendition of a decree vis-a-vis the forfeiture of the earnest money, as became received by the present plaintiffs from the present defendant.

15. Furthermore, it is also necessary to extract the relevant portions of the written statement, as became filed by the defendants.

E. That the defendant has always been ready and willing to perform his part of contract, but the plaintiffs have not got registered the sale deeds of 490 Sq. Yards, whereas the defendant had purchased the stamps of the said plot on 25.3.2011, but the defendants have not got the same registered and backed out from the said agreement.

F. That the defendant has always been ready and willing to perform his part of contract, but the intentions of the plaintiffs became mala fide and they refused to perform their part of contract inspite of repeated requests of the defendant.

G. That on 30.3.2011 the defendant remained present in the office of Sub Registrar Bilaspur alongwith balance sale consideration and expenses of execution and registration of sale deed, but the plaintiffs did not turn up on that day and after waiting whole day the defendant got marked his presence by way of Affidavit. Any how the plaintiffs also succeed to get attested their Affidavit in collusion with revenue staff, whereas the plaintiffs were not ready and willing to perform their part of contract...”

16. As stated (supra) though in clause F of the written statement, the defendant evinces his readiness and willingness to execute his part of the contractual obligations, thus within the time spelt therein, but *prima facie* the said readiness and willingness appears to be invented besides an after thought, as the defendant did not, within the



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period of limitation prescribed for instituting a suit for specific performance for enforcing agreement to sell, thus institute the said suit.

17. The inference (supra) ultimately devolves upon the present defendant's espousal to yet insist that the present plaintiffs be encumbered with a liability to pay ad valorem court fees to the total value of the sale consideration, which otherwise was to be paid by the present defendant on his instituting a suit for specific performance, but within the ordained period of limitation.

18. It is hereby relevant to extract Article 1 Schedule 1 of the Court Fees Act, 1870.

Sr.No.	Nature of Document	Amount of Value	Proper Fee
1	2	3	4
	Plaint, written statement, pleading or set off or counter claim or memorandum of appeal (not otherwise provided for in this Act) or of cross objections presented to any civil or revenue court except those mentioned in Section 3.	When the amount or value of the subject matter in dispute does not exceed one hundred rupees, for every ten rupees or part thereof.	One rupee
		xxxxxx	xxxxxx
2.	Plaint in a suit for possession under the Specific Relief Act, 1963	--	A fee of one half the amount prescribed in the foregoing scale.

19. Moreover, Part A, Chapter 3, Vol. I of the High Court Rules and Orders of the Punjab and Haryana High Court makes a reference to Suits Valuation Act, 1887, relevant paragraphs whereof are extracted hereinafter.

- General:-** It should be remembered that the value of a suit for the purposes of the Court-fees Act, 1870, and its value for the purposes of jurisdiction are not necessarily identical, and are frequently very different. The value for the purposes of court-fee is determined by the Court-fees Act, 1870 (as amended), and for purposes of jurisdiction by the Suits Valuation Act, 1887, and the rules made thereunder. In certain classes of suits the value for the purposes of court-fee also can be fixed by rules under section 9 of the Suits Valuation Act.
- Part I of Suits Valuation Act extended to Punjab:-** Part I of the Act was extended to this State by Central Government, Home Department, Notification No. 210, dated the 20th February, 1889, and the Punjab



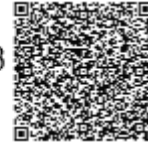
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Government has made rules under section 3 of the Act determining the value of land and of certain interests therein, for purposes of jurisdiction in the suits mentioned in the Court-fees Act, 1870, section 7, paragraph (v) and (vi) and paragraph (x), clause (d), which are republished in Part D of this Chapter. Xxxxx

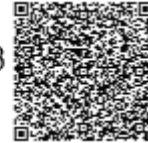
20. The judgments respectively rendered in case **Civil Revision No. 1223 of 2015** titled as **Harinder Singh Sidhoo and Others Vs. Varinder Pal Singh**, in case **Civil Revision No. 3600 of 2010** titled as **N.N.Estate Private Limited Vs. Surinder Goyal**, in case **CR-5290-2008** titled as **Himat Singh @ Mita Vs. Om Parkash and Others** and in case **CR-5463-2008** titled as **Jaswant Singh Vs. Achhra Singh and Another**, though propound a view that ad valorem court fees is payable on a plaint seeking the rendition of a decree for rescinding the appositely drawn contract of sale or the appositely drawn agreement to sell, become founded on the principle that

a) In the plaintiff claiming the rendition of a declaratory decree that the entered into agreement to sell being illegal, null and void and not enforceable upon him/her, therebys, ad valorem court fees is required to be affixed on the plaint. However, the said principle, has to be modified to the apposite factual scenario, inasmuch as, on the concerned thus espousing a declaration, qua the agreement to sell being void, whereupon, the said espoused declaratory decree is required to be based on an averment qua the agreement to sell being forged or being a false document. Moreover, with a further condition that when a further consequential relief becomes espoused, qua delivery of possession of the subject lands to the plaintiff by the defendant, whereupon, vis-a-vis the said asked for consequential relief, thus ad valorem court fees is required to be affixed on the plaint. Additionally also, if false recitals



occur in the agreement to sell, disclosing that some earnest money has been received by the plaintiff from the defendant, therebys also, to the considered mind of this Court, when there is no claim for the purportedly falsely declared earnest money amount being forfeited to the plaintiff, therebys also, no court fees ad valorem qua the non espoused claim for forfeiting the earnest money, rather is required to be appended on the plaint. Moreover, therebys the suit of the above genre would be simpliciter suit for declaration both for the purposes of valuation besides for the purposes of affixing court fees on the plaint. The above view falls in alignment to the supra declaration of law of the judgment rendered by the Apex Court in case titled as **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and Others (supra)**.

b) if the plaintiff espouses the rendition of a decree for rescinding the entered into agreement to sell on the ground, that the defendant had failed to perform his part of the contractual obligation. Moreover, if the time is essence of the contract. In addition, if the defendant through omitting to within the prescribed period of limitation, thus institute a suit for specific performance for enforcing the agreement to sell, therebys, the defendant is estopped to claim in the written statement that he was ready and willing to perform his part of the contractual obligations. Moreover therebys, if the possession of the subject property is retained by the present plaintiff, and, the present plaintiff thus only claims the rendition of a decree for rescinding the agreement to sell, besides only seeks a decree for forfeiting the earnest money as became received by him, therebys, court fees ad valorem to

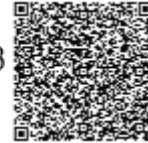


the amount of the earnest money which he claims to be forfeited but is required to be affixed on the plaint.

21. On the other hand, the judgments respectively, rendered in case **Civil Revision No. 3095 of 1986**, titled as **Raj Singh Vs. Deepak Kumar**, reported in **AIR 1988 Pb. 83**, and in **Civil Revision No. 4261 of 2012** titled as **Sanjeev Kumar and Another Vs. Harnek Singh and Others**, take a contra view that court fees ad valorem to the total sale consideration, rather is not required to become affixed on the plaint, upon the plaintiff seeking the rendition of decree for rescinding the instrument or deed drawn amongst the litigating parties, **but only court fees ad valorem to the value of the earnest money claimed to be forfeited is required to be affixed on the plaint.**

22. The exception to both the above would be a suit claiming the rendition of a decree for rescinding a registered gift deed, as vis-a-vis, a registered gift deed, there is no monetary consideration for therebys title becoming conferred upon the donee, rather through the drawing of a registered deed of gift, rather the consideration in respect of the execution of a registered deed of gift, thus is love and affection.

23. For the reasons to be assigned hereinafter, the facts and circumstances as detailed respectively in the plaint and in the written statement, thus are suggestive, that the plaintiff had only sought the rendition of simpliciter decree rather for rescinding the agreement to sell, besides is merely seeking a decree for forfeiture of the earnest money, as comprised in a sum of Rs. 46,00,000/-. The said is espoused on the ground that, the plaintiff though was ready and willing to



perform his part of contract, yet the defendant within the time prescribed in the agreement to sell i.e 30.03.2011, rather had failed to perform his part of contractual obligation. Moreover, *ex facie* the plaintiff is yet in possession of the suit property. The written statement instituted to the plaint by the defendant though is suggestive that the defendant is ready and willing to perform his part of contractual obligation.

24. However, for the reasons to be assigned hereinafter, the supra reared contention in the written statement filed to the plaint by the defendant is bereft of truth, as in the event of the defendant being ready and willing to perform his part of contractual obligation, thereupon, he would have instituted a suit for specific performance. Since he did not do so, thereby the said contention is *prima facie*, an ill reared contention.

25. As a result, in respect of the instant reference appertaining to the requirement of affixation of ad valorem court fees, on the plaint thus seeking the rendition of simpliciter decree for rescinding the entered into agreement to sell, the answer thereto, is that, the instant plaint does not require the affixing thereons, thus, of court fees ad valorem to the entire sale consideration, especially when only earnest money, in respect of the present agreement to sell, has been received by the vendor from the vendee. Moreover when only in respect whereof, merely a decree qua forfeiture thereof, thus has been claimed. Therefore, the affixation of court fees ad valorem to the espoused decree for forfeiting the earnest money, as became received by the plaintiff,



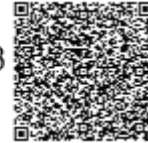
from the present defendant, thus was required to be affixed on the plaint, as was done. Conspicuously the affixation of court fees on the plaint ad valorem to the total sale consideration but is required only when the plaintiffs concerned, rather seek the rendition of a decree, thus for annulling the executed registered deed of conveyance, as becomes executed amongst the parties besides seeks the consequential relief for possession of the subject property becoming delivered to him.

26. Moreover, reiteratedly, the affixation of court fees on the plaint, seeking the relief for rescinding an agreement to sell, thus is to be ad valorem to the amount of the earnest money received and in respect whereof, the rendition of decree qua forfeiture thereof, is claimed in the suit.

27. For the further reasons to be assigned hereinafter, a non executant of an agreement to sell, who has neither received any earnest money nor claims the rendition of a decree for forfeiture of the earnest money, thus is not required to be affixing court fees ad valorem to the simpliciter declaratory decree, as claimed vis-a-vis the subject property, unless he seeks the consequential decree, that the possession of the suit property be delivered to him. The above view falls in alignment to the supra declaration of law, as made in the judgment rendered by the Apex Court in case titled as **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and Others (supra)**.

28. The reasons for making the supra conclusions emanate from the hereafter extracted provisions, as become carried in the Specific Relief Act, 1963.

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27. Where rescission may be adjudged or refused.—

(1) Any person interested in a contract may sue to have it rescinded, and such rescission may be adjudged by the court in any of the following cases, namely:—(a)where the contract is voidable or terminable by the plaintiff;(b)where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff.

(2) Notwithstanding anything contained in sub-section (1), the court may refuse to rescind the contract—(a)where the plaintiff has expressly or impliedly ratified the contract; or(b)where, owing to the change of circumstances which has taken place since the making of the contract (not being due to any act of the defendant himself), the parties cannot be substantially restored to the position in which they stood when the contract was made; or (c)where third parties have, during the subsistence of the contract, acquired rights in good faith without notice and for value; or (d) where only a part of the contract is sought to be rescinded and such part is not severable from the rest of the contract.

31. When cancellation may be ordered.—

(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

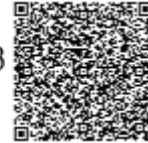
(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

34. Discretion of court as to declaration of status or right.—

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

29. Section 31 of the Act of 1963 creates a duo of rights. The said duo of rights becomes respectively embodied in sub section (1) and in sub section (2) of Section 31 of the Act of 1963. In sub section (1) of Section 31 (supra), a right becomes conferred upon a party to a contract or vis-a-vis a party, who has executed a written instrument, which



would but also cover an agreement to sell, thus to claim that the supra be rather declared to be void or voidable, but on an averment, that he has reasonable apprehension that if such instrument left outstanding, the same may cause him serious injury, given his further averring that he had acquired or would be conferred a defective title on the subject suit lands. Resultantly therebys, he is endowed with a right to seek a declaration that it be declared to be void or voidable, whereupons, the civil court may on the adduced evidence, thus exercise its statutory discretion to so adjudge it, and, order it to be delivered up and cancelled. On the suit of the said genre, if the entire sale consideration is received by the vendor from the vendee and also a consequential decree for possession is claimed, therebys, court fees ad valorem to the supra espousal but is required to be affixed on the plaint. On the other hand, if only a part of the sale consideration is delivered by the vendee to the vendor and no consequential relief for delivery of possession of the subject property is claimed, thereupons, court fees ad valorem to the earnest money delivered by the vendee to the vendor is to be affixed on the plaint.

30. On the other hand, sub section (2) of Section 31 of the Act of 1963 covers a situation where a registered deed of conveyance, which but is required to be compulsorily registered in terms of the Registration Act, 1908 is sought to be cancelled, at the instance of the apposite executant theretos, through the rendition of a decree of cancellation of the said executed deed of conveyance.

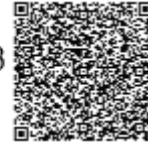


31. On such a suit being filed, the civil Court of competent jurisdiction, after making a well appraisal of the adduced evidence becomes empowered to make a decree to the extent that the rendered decree, be enforced through the Sub Registrar concerned, making apposite note(s) in the books as become maintained by him.

32. However, Section 34 of the Act of 1963, vests a discretion in a non-executant who otherwise has a right, title, and, interest over the property, in respect whereof, thus within the jurisdictional domain(s) of the sub section (1) or within the domain of sub section (2) of Section 31 of the Act of 1963, rather written instruments or registered deeds of conveyance, become executed, thus to espouse that if the supra become permitted to hold effectivity, thereupons, his rights, title and interest would become adversely effected, wherebys reiteratedly, he becomes entitled to institute a suit for declaration, that the respectively entered instrument(s) and/or deeds of conveyance be quashed and set aside.

33. Moreover, in case possession over the suit property or qua the instrument property, thus is delivered to the apposite litigant, thereupons, there is a necessity of court fees ad valorem to the consequential relief of possession becoming affixed on the plaint. Contrarily, when the plaintiff is recouring the mandate of Section 34 (supra), and also is in possession of the suit property or of the instrument property, therebys, he is not required to be appending ad valorem court fees on the apposite suit.

34. Moreover, if the said suit but is a simpliciter suit for declaration, then the apposite ad valorem court fees on the said



simpliciter declaratory suit, is not required to be affixed, but in case in the apposite suit, reiteratedly, the plaintiff also claims the consequential relief qua possession of the suit property, becoming delivered to him, thereupons, court fees ad valorem to the market value of the suit property, is required to be affixed on the plaint.

35. Therefore, the legislative purpose(s) for incorporating Section 34 (supra) is two fold.

a) The endowment of title qua the vendee, when is challenged through an imperfect or a non-est title becoming vested in the vendor, whereas, the title to the deed property vesting in the plaintiff, therebys, the plaintiff than being put to aggravated pain, through his yet being asked to append on the plaint, thus court fees ad valorem to the market value of the deed property or to append on the plaint, but court fees ad valorem to the sale consideration recited in the asked to be nullified deed. The said is not the legislative purpose behind the engraftment of Section 34 of the Act of 1963. However, the proviso thereunder is also of conspicuous importance as in the event of the plaintiff, despite becoming entitled to canvass the apposite consequential relief, yet his not canvassing the required to be canvassed consequential relief, therebys, there is a restraint against the civil Court of competent jurisdiction, to even render a simpliciter decree, thus annulling the entered into registered deed of conveyance or the entered into agreement to sell.

b) However, yet when the said declaratory suit is accompanied by a further espousal qua rendition of a decree of delivery



of possession of the subject property to the plaintiff from the defendant, therebys, necessarily court fees ad valorem to the sale consideration recited in the deed, asked to nullified rather is required to be affixed, thus on the apposite plaint. The said requirement would not defeat the legislative purpose, as registered deeds or instruments when are public documents, thus within the public domain, therebys, if the plaintiff who recourses the statutory mechanism contemplated in Section 34 (supra). Resultantly therebys his lack of diligence, requires his becoming encumbered with the liability to append on the plaint, court fees ad valorem to the sale consideration recited in the deed, which is asked to be nullified, thus through a decree in the said regard becoming rendered. The above inference falls in alignment with the inference (supra), as became marshalled from the proviso which occurs under Section 34 of the Act of 1963.

36. The present facts do not envisage that in the present suit, relief became asked for by the plaintiff or by the defendant in the counter claim, if any, that any or the present un-registered deed of contract, thus being respectively asked to be nullified or the present agreement to sell being asked to be enforced. The relief as claimed in the present plaint, was only qua the supra executed agreement to sell, becoming quashed and set aside or the same being rescinded through a decree in the said regard becoming passed. Moreover, in the present suit, there was no averment that the present agreement to sell was to be declared to be void or voidable nor therebys court fees ad valorem to the entire sale consideration was required to be affixed on the plaint.



37. Therefore, when in the instant case, there was no registered deed of conveyance but only an agreement to sell became executed between the plaintiff and the defendant. Moreover, when the instant suit, as became cast under Section 27 of the Act of 1963, thus was a simpliciter suit, confined to the rendition of a decree qua the agreement to sell being declared to be rescinded. Since the said claim became founded on the fact, that the defendant was unwilling and unready to execute his part of the contractual obligation, besides, when as stated supra, the further relief for forfeiture of the earnest money/amount paid by the defendant, comprised in a sum of Rs.46,00,000/-, was also espoused to be made in favour of the plaintiff.

38. Significantly, the defendant though denied that he was unready and unwilling to perform his part of the contractual obligation. Moreover, since the defendant evidently but was also not in possession of the suit property, yet the defendant asserted that court fees ad valorem to the entire sale consideration was required to be affixed on the plaint by the plaintiff. The said espousal made by the defendant became accepted and led to the making of the impugned order by the learned civil Court of competent jurisdiction.

39. As stated (supra) the contra distinct views as become taken in the judgments (supra), thus, are required to be reconciled.

40. The reconciliations vis-a-vis the supra conflicting views, to the considered mind of this Court, thus would occur only on this Court making a profound deep reading of the supra extracted provisions as embodied in Act of 1963.



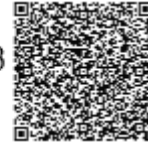
i) The agreements to sell do not confer any title vis-a-vis the apposite subject lands rather title vis-a-vis the subject lands become conferred through the execution of registered deeds of conveyance amongst the contracting parties. In case the contractual obligation cast upon the plaintiff remain un-adhered to by the plaintiff, thereupons, the defendant has a right to institute a suit for specific performance seeking thereby the rendition of decree, that the plaintiff be directed to execute a registered deed of conveyance in respect of the agreement lands. However extantly, the defendant did not institute a suit for specific performance within the prescribed period of limitation, despite time for reason (*supra*) being the essence of the contract. As such, *prima facie*, there is truth in the averment made in the plaint that despite time being the essence of the contract and despite the plaintiff being ready and willing to perform his part of the contractual obligation, yet the defendant being non compliant. Therefore, the stand taken by the defendant that he was ready and willing to perform his part of the contractual obligation but becomes belied from the factum of omission on the part of the defendant to institute a suit for specific performance rather for thereby the present plaintiff, on his becoming arrayed as a defendant in the said suit, thus becoming directed to execute a deed of conveyance in respect of the subject property.

ii) Though the entire sale consideration is mentioned in the agreement to sell, but normally only earnest money is parted with, by the vendee to the vendor, thus, at the time of execution of the agreement to sell, whereas, the remaining part of the sale consideration



is liquidated by the vendor to the vendee, at the time of execution of the registered deed of conveyance amongst them. Since vestment of complete title in the vendor takes place only on the execution of the registered deed of conveyance, and, when at the said stage, the remaining sale consideration is also liquidated by the vendee to the vendor, thus, in the presence of the registering officer concerned. Therefore, on the plaintiff concerned, instituting a suit for specific performance against the errant defendant, thereby the plaintiff, thus on the said instituted plaint, is required to be affixing court fees ad valorem to the entire sale consideration, as embodied in the strived to be enforced agreement to sell, through a suit for specific performance in the said regard becoming instituted before a civil Court of competent jurisdiction. However reiteratedly, as stated (*supra*) the defendant did not do so, whereby, this Court reiteratedly concludes, that he is estopped to claim that the plaintiff rather is ill asserting qua the rendition of a decree for rescinding the agreement to sell, thus on the ground, that the defendant is unwilling and unready to perform his part of the contractual obligation.

iii) Furthermore, if time is essence of the contract and if the said time became breached at the instance of the defendant, thereby, if the agreement to sell is not permitted to be rescinded, thereby, the plaintiffs right to property, through his post the making of decree, rather making alienations of the subject property, but would become completely defeated. In consequence, *prima facie*, the decree as claimed by the plaintiff was *prima facie*, a well espoused decree and



required that only court fees ad valorem to the earnest money, as received by the plaintiff, from the defendant, thus being affixed on the plaint, than court fees ad valorem to the entire sale consideration becoming asked to be affixed on the plaint. Importantly, when there is no parting of possession of the suit property from the plaintiff to the defendant nor any consequential relief in the said regard became espoused.

iv) The necessary corollary qua no vestment of title taking place in the defendant, until a registered deed of conveyance becomes executed before the Sub Registrar, is but that, when the plaintiff seeks the rendition of a simpliciter decree for cancelling the agreement to sell, wherein, also an espousal is made that the earnest money as received by the plaintiff, in contemporaneity to the drawing of the agreement to sell, thus be decreed to become forfeited to the present plaintiffs. Resultantly, court fees ad valorem to the asked for forfeited earnest money, but is required to be affixed on the plaint, than court fees ad valorem to the entire sale consideration, which however has not yet passed from the defendant to the plaintiff, rather becoming insisted to be affixed on the plaint.

v) Moreover, with time being the essence of the contract and the defendant breaching the specific time mentioned in the agreement, through his omitting to file a suit for specific performance for enforcing the agreement to sell, thereupon, he but becomes estopped to contend in the written statement, that he was ready and willing to perform his part of the contractual obligation, besides also



becomes estopped to thus contend that rather the present plaintiff was not ready and willing to perform his part of the contractual obligation. Resultantly the said omission, thus constrains this Court, to conclude that therebys *prima facie*, the apposite contractual covenant declaring that therebys the earnest money received by the plaintiff from the defendant, thus required forfeiture, but was required to be enforced, through a decree in the said regard, as claimed, thus becoming rendered by the civil court, than the defendant insisting that despite the entire sale consideration not passing, yet the plaintiff being untenably asked to affix court fees on the plaint, thus ad valorem to the entire sale consideration which however did not ever pass nor when there is any *prima facie* proof, qua the passing of the entire sale consideration from the present defendant to the present plaintiffs.

vi) Further, if in an suit for declaration becoming filed by the non executant, vis-a-vis the registered deed of conveyance or the agreement to sell, wherebys, he claims the rendition of a decree for quashing and setting aside the respectively drawn registered deed of conveyance or the agreement to sell, therebys, if he is in possession of the subject properties, therebys, he is not required to be affixing, on the said suit, court fees ad valorem to the subject property, as the said suit is a *simpliciter* suit for declaration without the consequential relief for possession. However, when in the said suit, the apposite non executant claims the consequential relief that possession of the subject property be delivered, thereupon, he is required to be affixing court fees ad valorem to the market value of the subject property.



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41. Lastly, even if there is a deficiency in the affixing of ad valorem court fees, yet merely on the said ground the plaint cannot be rejected rather the said deficiency can asked to be made good at the time of the pronouncement of the decree. In other words, the same is a curable defect.

42. In aftermath, the supra answers are rendered to the supra reference. List the case, as per roster for deciding the same on merits.

43. Any observation(s) devolving upon the merits of the *lis*, are meant only for deciding the instant reference, thus it/they be not construed to be binding upon the civil Court concerned.

(SURESHWAR THAKUR)
JUDGE

31.01.2025
kavneet singh

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No