

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.4419 of 2012 (O&M)

Date of decision: 29.06.2015

Sukhwinder Singh and another

.... Petitioners

versus

Malkiat Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Pardeep Goyal and Mr. H.S. Dhandi, Advocates,
for the petitioners.

Mr. P.S. Dhaliwal, Advocate,
for respondent No.1.

Mr. Ashok Singla, Advocate,
for respondent No.3.

Mr. Dinesh Kumar, Advocate,
for Mr.M.K. Singla, Advocate,
for respondent No.4.

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J. (Oral)

1. The contention taken in revision by the contesting defendant is that in a suit instituted as an indigent person along with the petition under Order 33 Rule 1 CPC, the court has issued an interim order under Order 39 Rules 1 & 2 CPC which is impermissible. The argument is that the interim order under Order

39 Rules 1 & 2 CPC could be invoked only in a suit and a petition for consideration under Order 33 Rule 1 CPC cannot be treated as a suit.

2. This issue has been considered by various High Courts and found in the decisions, see: **Matuki Mistry Versus Kamakhya Prasad and others-AIR 158 (Patna) 264; Manorama Dasi Versus Sabita Dasi-AIR 1951 (Calcutta) 357; Narayan Dutt and another Versus Smt. Mohani Devi and another-AIR 1964 (Raj) 279; Pankaj Kumar Bisnoi Versus Smt. Urmila Devi and others-AIR 1983 NOC 121 (All.)** they hold that the relief of interim injunction could be granted even in cases instituted by indigent person before registration as suit. Even if the order under Order 39 CPC could be invoked only in a suit, it cannot be a situation that an indigent person cannot secure an interim relief till adjudication is complete regarding his indigency. It will amount to causing a serious fetter of access to justice which is a constitutional goal under Order 39-A of the Constitution. Even if it were to be contended that the interim order could have been passed only in a suit, I would take the order passed as an order passed under Section 151 and would maintain the same.

3. The learned counsel would state that the respondent herein has, after taking an interim order, not allowed for consideration of an application for indigency for the last 7 years by

citing the order of stay. The stay of the order could never have been taken as a stay of disposal of the petition for consideration of the indigency. The trial court is directed to dispose of the petition on the objection taken by the defendant within a period of 6 weeks and report to this court. I find no cause for inference with the order already passed. It is maintained and the revision petition is dismissed but with the above observations.

(K.KANNAN)
JUDGE

29.06.2015
sanjeev