

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 4317 of 2014 (O/M)
Date of decision : 24.8.2015

Sukhwinder Singh

..... Revisionist

Versus

Rakesh Kumar

..... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Arun Balian, Advocate, for the revisionist.

Mr. Arvind Bansal, Advocate, for respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)

Impugned in the present revision is the order dated 11.3.2014 (Annexure-P-4), passed by the learned Additional District Judge, Kaithal, vide which the appeal filed by the present revisionist was dismissed on the ground that deficiency of court fee has not been made up. It was observed in the order that the present revisionist, vide his statement dated 24.1.2014, sought time to make up the deficiency of court fee. The opportunity was granted to him, but he failed to make up the deficiency of court fee.

CR No. 4317 of 2014 (O/M)

-2-

Learned counsel for the revisionist has argued that alongwith the appeal, the revisionist had filed an application for permission to sue as an indigent person. The said application has not been decided by the lower Court.

On the other hand, the learned counsel for respondent has argued that the revisionist himself sought time to make up the deficiency of court fee, but he failed to do so. Even thereafter, he was granted more opportunities to make the deficiency of court fee and ultimately, the appeal was dismissed on 11.3.2014. When the revisionist sought time to make up the deficiency of court fee, his application to sue as an indigent person is deemed to have been dismissed.

I have heard the learned counsel for the parties and have also carefully gone through the file.

After going through the file, I am of the view that admittedly, the suit for specific performance was decreed against the present revisionist, who was defendant in the said case. Alongwith the appeal, an application was filed for permission to sue as an indigent person. On the first date of hearing itself, the revisionist sought time to make up the deficiency of court fee, which he has ultimately failed to make up. The lower Court did not pass any order on the application filed under Order 33 Rule 1 CPC by the present revisionist. If the revisionist seeks time to make up the deficiency of

CR No. 4317 of 2014 (O/M)

court fee and fails to make up the same, then his application under Order 33 Rule 1 CPC was required to be decided. As such without deciding the said application, the appeal could not be dismissed on the ground of non-payment of court fee. Accordingly, the impugned order dated 11.3.2014 is set aside and the case is remanded back to the Court of the learned Additional District Judge, Kaithal, with a direction to dispose of the application under Order 33 Rule 1 CPC, moved by the present revisionist. Both the parties are directed to appear before the learned Additional District Judge, Kaithal, on 23.9.2015.

The present revision is accordingly allowed.

(KULDIP SINGH)
JUDGE

24.8.2015
sjks