

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

Civil Revision No. 5769 of 2005 (O&M)

Date of Decision: 13.02.2015

Surinder Pal through his LRs and others

..... Petitioners

Vs.

Tejinder Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Anil Kshetarpal, Senior Advocate assisted by
Mr. Piyush Aggarwal, Advocate for the petitioners.

None for the respondents.

JASWANT SINGH, J. (ORAL)

The present revision has been filed by defendant Nos.6 to 9 aggrieved by the order dated 30.08.2005 (**P-8**), passed by the learned Civil Judge (Sr. Divn.), Kurukshetra, whereby the application of the plaintiff/respondent No.1 under Order XXXIII of the Code of Civil Procedure for permission to sue as an indigent lady has been allowed.

Facts in short are that respondent/plaintiff Twjinder Kaur filed a suit on 06.07.2002 claiming damages to the tune of ₹ 50 Lacs along with 18% interest per annum on account of loss of reputation as well as the amounts spent on the wedding of her daughter-Parminder Preet Masson. The plaint is annexed as **Annexure P-1**. It is pleaded that on 09.02.1998, wedding of her daughter was solemnized with Ashok Toor/defendant No.1 on the assurances given by the mother/defendant No.2 of the boy and the relatives and mediators/rest of the defendants that the boy was well established person in England with huge

properties. A total sum of ₹ 8 Lacs was spent in the marriage which included payment in cash and other things. After marriage, her daughter resided in England with defendant No.1, who was stated to be suffering from impotency and due to his constant beatings, insulting and torturers, life of the daughter was ruined. The plaintiff is stated to have incurred an expenses of Rs.3 Lacs on telephone to remain in contact during the mental agony suffered by her daughter in England. The plaintiff thus claims that her entire reputation had been spoiled in public and hence the claim for a sum of ₹ 50 Lacs as damages.

Along with the plaint, she also annexed an application (**P-2**) for permission to sue as an indigent person. On the said application, a report was submitted by the Patwari that although the plaintiff did not have any moveable or immovable property in her name in Village Pipli, however, her husband was employed in Govt. Service. It has come on record that her husband was employed as Sub Divisional Officer in Haryana Government.

The learned lower Court, vide impugned order dated 30.08.2005 (**P-8**) has allowed the application. Hence, the present revision.

This Court, vide interim order dated 21.12.2005, has stayed further proceedings before the learned trial Court, which was subsequently confirmed, vide order dated 09.01.2007 while admitting the present revision.

Learned Counsel for the petitioners has argued that the suit in view of the pleaded facts has to be considered as a suit in a representative capacity on behalf of the husband and wife/family and, therefore, in the light of provisions of Explanation III, Rule 1, Order XXXIII, a reference to the means of the family or the husband necessarily had to be made and the application decided accordingly. In the present case, no such effort has been made by the learned trial Court and, therefore, impugned order is liable to be set aside.

None has appeared on behalf of the contesting respondent/plaintiff to address the arguments.

After hearing learned Counsel for the petitioners, this Court finds that some substance in the contention.

Explanation III specifically provides that the question of the person seeking status of an indigent person, in the facts as in the present case had to be determined with reference to the means possessed in such capacity.

In the plaint, it is apparent that the plaintiff has made an averment that a sum of ₹ 8 Lacs plus ₹ 3 Lacs towards telephone bills had been spent, since she claims herself to be a housewife and amounts necessarily were spent from the resources of the family including the husband, therefore, facts cumulatively taken had to be adjudicated in the light of the aforesaid Explanation III referred. Such recourse has not been done by the learned Court below while passing the impugned order (**P-8**).

Accordingly, the present revision is allowed and the impugned order dated 30.08.2005 (**P-8**) is set aside and the parties are directed to appear before the learned trial Court on 01.04.2015, who shall decide the application (**P-2**) afresh in accordance with law after giving due opportunities to both the parties.

Disposed of with above directions.

February 13, 2015
Gagan

(JASWANT SINGH)
JUDGE