

In the High Court of Punjab and Haryana at Chandigarh

CR No. 872 of 2015 (O&M)
Date of decision: 17.03.2015

Sanjeev Vohra and Others

.....Petitioners

Versus

Ritu Vohra

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr.K.S.Dadwal, Advocate
for the petitioners.

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SABINA, J

Petitioners have filed this petition under Article 227 of the Constitution of India challenging the order dated 20.11.2014 (Annexure P5) whereby application moved by the respondent under Order 33 Rule 1 of the Code of Civil Procedure, 1908 ('CPC' for short), was allowed.

Learned counsel for the petitioners has submitted that the Trial Court had erred in allowing the application moved by the respondent for permitting her to pursue the suit as an indigent person as she has sufficient means to affix the necessary court fee. In support of his arguments, learned counsel has placed reliance on the judgment of the Hon'ble Apex Court in Mathai M Paikeday vs. C.K.Antony 2011 AIR (SCW) 4416 wherein it was held as under:-

“18. To sum up, the indigent person, in terms of explanation I to Rule 1 of Order 33 of the Civil Procedure Code, is one who is either not possessed of sufficient

means to pay court fee when such fee is prescribed by law, or is not entitled to property worth one thousand rupees when such court fee is not prescribed. In both the cases, the property exempted from the attachment in execution of a decree and the subject-matter of the suit shall not be taken into account to calculate financial worth or ability of such indigent person. Moreover, the factors such as person's employment status and total income including retirement benefits in the form of pension, ownership of realizable unencumbered assets, and person's total indebtedness and financial assistance received from the family member or close friends can be taken into account in order to determine whether a person is possessed of sufficient means or indigent to pay requisite court fee. Therefore, the expression "sufficient means" in Order 33 Rule 1 of the Civil Procedure Code contemplates the ability or capacity of a person in the ordinary course to raise money by available lawful means to pay court fee."

Respondent has filed suit for recovery of ₹56,60,000/- against the petitioners. Along with the suit, respondent moved an application that she may be permitted to pursue the suit as an indigent person. Notice was issued to the petitioners. On the pleadings of the parties, following issues were framed by the trial Court on the application under Order 33 Rule 1 CPC:-

"1. Whether the applicant is an indigent person?OPA

2. Whether the application is not maintainable?OPR

3. Whether the applicant has not come to the Court with clean hands, if so its effect? OPR

4. Relief.”

Trial Court vide impugned order dated 20.11.2014 (Annexure P5) allowed the application. Hence, the present petition.

The case of the respondent was that she had got married to petitioner No.1-Sanjiv Vohra on 2.12.2005 and they were blessed with a son out of the said wedlock. However, after marriage, petitioners started taunting the respondent for bringing insufficient dowry. Respondent was tortured by the petitioners. Respondent came to know that she was suffering from breast cancer and underwent an operation in this regard. Respondent had spent about ₹2,50,000/- on her treatment but petitioner No.1 did not take her to the matrimonial home and she had to accompany her father to her parental home. Respondent also got a criminal case registered against the petitioners under Sections 406, 498-A of the Indian Penal Code, 1860. Petitioner No.1 had filed a divorce petition against the respondent and the same was pending. Respondent had filed the petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and had also filed a petition under the Guardian and Wards Act, 1890 claiming custody of the child.

The case of the petitioners, on the other hand, was that the respondent had sufficient means to affix the necessary court fee. In fact, petitioner No.1 had given a draft dated 9.4.2009 in the sum of ₹2,00,000/- to the respondent. Respondent was also in possession of ornaments and other articles.

In the present case, the relationship between the parties is not in dispute. Annexure P3 is an affidavit tendered by the respondent before the trial Court. A perusal of the same reveals that the respondent has stated that she was an indigent person and she had no property in her name. It has been noticed by the Trial Court that the respondent is living in her parental home since 23.3.2007.

Admittedly, respondent No.1 had undergone an operation as she was suffering from breast cancer. The case of the respondent was that her father had spent ₹2,50,000/- on her treatment. Petitioner No.1 had also made payment to the respondent but, admittedly, respondent is undergoing treatment as she is suffering from breast cancer.

In the facts and circumstances of the present case, learned trial Court had rightly allowed the application moved by the respondent to permit her to pursue the case as an indigent person. The judgment relied upon by the learned counsel for the petitioners fails to advance the case of the petitioners as it is based on different facts. No ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

March 17, 2015
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