

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

**C.M.No.14572-C of 2014 in/and
RSA No.1405 of 2009 O&M)
Date of decision: 12.01.2015**

Dilbagh @ Vipan and another

... Appellants

Vs.

Smt. Santosh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rahul Vats, Advocate
for the appellants.

Mr. Animesh Sharma, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

C.M.No.14572-C-2014

Prayer in the instant application is for early hearing of the appeal on behalf of the applicant/respondent No.1, on the ground that applicant/respondent No.1 has no objection, in case the application is allowed.

Notice of the application to Mr. Rahul Vats, Advocate for the non-applicant-appellants.

Mr. Rahul Vats, Advocate accepts notice on behalf of the non-applicant-appellants and submits that he has no objection, in case the prayer made in the application is allowed and the matter is remanded to the lower Appellate Court.

The application for early hearing of the appeal is allowed and with the consent of counsel for the parties, the main appeal is taken on board for hearing today itself.

RSA No.1405 of 2009 (O&M)

The plaintiffs-appellants filed a suit for possession for the land described in the suit against defendants-respondents No.1 and 2. The appellants were required to affix the Court fee in view of provisions of Section 7 sub Clause 4(C) of the Court Fees Act. In view of the fact that plaintiffs-appellants did not affix the Court fee, issue No.4-A was decided against the plaintiffs-appellants and in favour of defendants-respondents. Accordingly, the suit was dismissed.

The plaintiffs-appellants assailed the judgment and decree dated 20.02.2006 of the trial Court by filing an appeal before the lower Appellate Court. Along with an appeal, an application under Order 44 Rule 1 CPC seeking permission of the Court to file an appeal as indigent persons was also filed. The lower Appellate Court after noticing the contentions of the parties to the *lis*, dismissed the application filed under Order 44 Rule 1 of the CPC, however, did not grant the opportunity to the plaintiff-appellants to affix the Court fee and instead dismissed the application under Order 44 Rule 1 of the CPC and also dismissed the appeal.

It is the said judgment dated 09.09.2008 of the lower Appellate Court, which has been assailed in the present regular

second appeal on the ground that lower Appellate Court has committed illegality and perversity in not following the procedure which is known to the law. It has been submitted that plaintiff-appellants ought to have been given an opportunity to pay the Court fee, even if, the Court had not agreed with the averments made in the application filed under Order 44 Rule 1 of the CPC.

It is a matter of record that the present regular second appeal has been filed after affixing the Court fee. Since the lower Appellate Court has not followed the procedure as prescribed in law, it would not be appropriate to keep the appeal pending for adjudication for years together, particularly when the defendant-respondent No.1 has conceded to the aforementioned legal submission of the plaintiffs-appellants.

I am in agreement with the argument submitted by learned counsel for the appellants that the lower Appellate Court while dismissing the application filed under Order 44 Rule 1 of the CPC ought to have given at least one opportunity to affix the Court fee and in case, the plaintiff-appellants had not availed that opportunity, then the Court should have followed the procedure as prescribed in law. Having not been done so, impugned judgment dated 09.09.2008 is not liable to be sustained in the eyes of law as the present appeal involves following substantial questions of law:-

*“i) Whether while dismissing the application of
the plaintiff-appellants for being permitted to sue as*

indigent persons, the learned ADJ Panchkula was not bound to grant time to make good the deficiency in Court fee?

ii) Whether the learned ADJ Panchkula was not bound to reject the memo of appeal if deficiency in Court fee was not made good by the plaintiff-appellants?"

Accordingly, the present appeal is accepted and the impugned judgment and decree dated 09.09.2008 of the lower Appellate Court is set aside and the matter is remanded back to the lower Appellate Court to decide the appeal afresh after following the procedure as prescribed in the law.

It is expected that the lower Appellate Court would decide the appeal as expeditiously as possible preferably within a period of one year.

(AMIT RAWAL)
JUDGE

January 12, 2015
savita