

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.5821 of 2016 (O&M)

Date of decision:07.09.2016

Neeraj Kumar

... Petitioner

Vs.

Guru Nanak Senior Secondary School, Hisar
and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vivek Khatri, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

The petitioner-plaintiff is aggrieved of the impugned orders dated 26.07.2016 (Annexure P-5) and 02.09.2016 (Annexure P-9).

Mr. Vivek Khatri, learned counsel appearing on behalf of the petitioner-plaintiff submits that the petitioner filed a civil suit for recovery of ₹4,50,000/- on account of wastage of one year which has been dismissed by the Court below on merits and he has also filed appeal before the Lower Appellate Court along with application under Order 33 Rule 2 CPC to sue the appeal as an indigent person. The Lower Appellate Court dismissed the said application vide order dated 26.07.2016 and directed the petitioner/appellant to make up the deficiency in the Court fee. However, liberty was granted to the State to recover the Court fee by way of appropriate proceedings. Thereafter, the petitioner filed the application under Order 47 Rule 1 CPC for review of the aforesaid order but the same

has also been dismissed vide impugned order dated 02.09.2016. He further submits that trial Court after holding enquiry and after seeking report from the Collector has passed the order dated 16.7.2009 by holding the petitioner as an indigent person and by granting him permission to sue as indigent person and the aforesaid order dated 16.07.2009 has not been assailed by the other party and attained finality. Once the direction by the Court below has been issued with regard to indigent person with no changes in the circumstances, the petitioner should not have been called upon to pay the Court fees. In this manner, the petitioner has approached this Court.

In support of his aforementioned contentions, he relies upon the judgment rendered in **Jagga Singh vs. Jagtar Singh and others 2006 (2) RCR(Civil) 256.**

I have heard learned counsel for the petitioner and appraised the paper book.

I am in agreement with the contention of Mr. Khatri, for, once the petitioner has been granted a liberty to sue the suit as an indigent person, vide order dated 16.07.2009 and the defendants have not been able to make out a new case that after the impugned orders that the financial position of the petitioner has been improved yet after dismissal of the application under Order 33 Rule 2 CPC, deposited the Court fees.

In my view, the Lower Appellate Court ought not to have called upon the petitioner to deposit the balance/deficiency in the Court fees as he has undertaken to pay the Court fee, if after examining the oral and

documentary evidence brought on record the Court arrives at a finding that suit is liable to be decreed, but not at this stage. I am in agreement with the ratio decidendi culled out by this Court in Jagga Singh's case (supra).

In view of the aforementioned fact, since the petitioner has already paid the Court fees of ₹28,050/-, the Lower Appellate Court is directed to decide the appeal.

Keeping in view the aforementioned observations, the Lower Appellate Court should not have been called upon the petitioner to make the deficiency in the Court fees, at this stage. The order calling upon him to pay the Court fees, is deferred.

Revision petition stands disposed of.

(AMIT RAWAL)
JUDGE

September 07, 2016
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No