

**249 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CR No.7313 of 2015 (O&M)**

**Date of decision: November 04, 2016**

Jaswinder Singh

...Petitioner

Versus

Jaspal Kaur and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Ashok Bhardwaj, Advocate  
for the petitioner.

Mr. Tribhuvan Singla, Advocate  
for the respondents.

**AMIT RAWAL, J.(ORAL)**

Petitioner-defendant is aggrieved of the impugned order dated 26.08.2015 (Annexure P-5), whereby, the application under Order 44, Rule 1 of Code of Civil Procedure for grant of permission to sue an an indigent person and to pursue the appeal against the judgment and decree dated . 6.12.2013 in Suit bearing No.9 of 2009 titled as *Jaspal Kaur and another vs. Ranjeet Singh and another*, has been dismissed by the lower appellate Court.

Mr. Ashok Bhardwaj, learned counsel appearing on behalf of the petitioner submits that suit seeking specific performance of agreement to sell dated 21.12.2005 in respect of land measuring 59 kanal 12 marlas has been decreed, whereby, the respondent-plaintiffs have been held entitled to refund of earnest money of Rs.25,40,000/- alongwith interest @ 9% p.a. from the date of payment till passing of decree and @ 6% p.a. from the date

of decree till realisation. The petitioner is totally handicapped person and does not hold any property and in this regard, application under the aforesaid provisions of law was moved, but the same has been dismissed. He does not own any other property as stated in the application. Even photographs of the plaintiff show that he is totally bed ridden and does not have any source of income. The decree is based on certain grounds which would be the subject matter of consideration by the lower appellate Court.

Mr. Tribhuvan Singla, learned counsel appearing on behalf of the respondent-decree holder submits that there is a categoric averment in the reply regarding owning of residential property/land in Kishan Bagh Colony, Gali No.4, Nabha Gate, Sangrur having a value of Rs.30 lacs, a plot and land measuring 59 Kanal 12 Marlas in Village Dhanoula and the said fact has not been denied/rebutted by an independent affidavit or rejoinder. Therefore, the averments are deemed to be admitted.

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

Since the petitioner is stated to be handicapped person and does not have any source of income as alleged in the present revision petition, much less, before the lower Appellate Court, I am of the view that the explanation given in the application is justifiable/plausible. The medical condition/physical state of the petitioner has not been rebutted. Be that as it may, I am of the view that the petitioner-defendant should be granted permission to pursue the appeal under the aforementioned provisions of law. In view of the facts narrated above, the payment of Court fee would almost be more than Rs.25,000/-.

For the reasons aforesaid, the order under challenge is hereby

set aside and application is allowed. Petitioner is granted permission to pursue the appeal as an indigent person.

Civil Revision stands allowed.

November 04, 2016

sk

(AMIT RAWAL)

JUDGE

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |