

Civil Revision No.8009 of 2016

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.8009 of 2016

Date of Decision: 12.12.2016

Anil and another

---Petitioners

versus

Pooja

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Ajay Jain, Advocate
for the petitioners**

Rekha Mittal, J.

The present petition directs challenge against order dated 3.11.2016 (Annexure P-6) passed by the Civil Judge (Junior Division). Rewari whereby application filed by the petitioners/defendants under Order XXXIII Rule 9 read with Section 151 of the Code of Civil Procedure (in short "CPC"), has been dismissed.

Pooja, respondent/plaintiff has filed a suit for recovery of Rs. 2.5 lakhs alongwith interest. She filed an application for permission to file the suit as an indigent person and the same was allowed. The petitioners/defendants filed the instant application by invoking the provisions of Rule 9 of Order XXXIII CPC for withdrawal of permission to sue as an indigent person on the grounds incorporated in paras 3 to 6 of the application. After seeking reply of the respondent/plaintiff, the same came to be dismissed by the trial court.

Counsel for the petitioners has submitted that permission granted by the trial court is liable to be withdrawn as the respondent is guilty of vexatious and improper conduct in the course of suit due to her having not appeared in person at the time of filing application seeking necessary permission. Another submission made by counsel is that the respondent/plaintiff has filed number of cases against the petitioners in which she has engaged a counsel, sufficient to prove that her means are such that she ought not to continue as an indigent person.

I have heard counsel for the petitioners, perused the paper book particularly the application filed by the petitioners, reply thereto and the order impugned.

Any defect in filing an application under Order XXXIII Rule 1 CPC such as that the application was filed by the respondent through counsel and not in person cannot be construed as vexatious or improper conduct in the course of suit envisaged in Clause (a) of Rule 9 of Order XXXIII CPC. If the petitioners had any grievance to express against order allowing application for permission to sue as an indigent person, they were required to resort to appropriate proceedings under law and cannot seek withdrawal of permission on that count.

The petitioners have averred with regard to resources of father of Pooja which are not relevant in the context if Pooja can be permitted to sue as an indigent person or otherwise. In para 4, it is mentioned that Reena (appears to be wrongly mentioned as such in place of Pooja) is a trained tailor and earning a handsome amount. This plea has been denied by the respondent. There is no material on record to prima facie establish claim of the petitioners that means of the respondent are such that she ought not to continue to sue as an indigent person. The mere fact that the respondent has filed certain cases through counsel is also not sufficient to record a finding at this stage that she has sufficient means to pay the court fee, therefore, she should not be allowed to continue the proceedings as an indigent person.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

12.12.2016

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No