

In the High Court of Punjab and Haryana at Chandigarh

SAO No. 18 of 2015
Date of Decision:5.5.2016

Daler Singh and others

---Appellants

vs.

Punjab State Civil Supplies Corporation Limited and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ravish Bansal, Advocate
for the appellants

Mr. Aman Chaudhary, Advocate
for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present appeal has been directed against the order dated 18.12.2014 passed by the Additional District Judge, Faridkot dismissing application of the appellants under Order 33 Rule 3 read with Section 151 of the Code of Civil Procedure (in short “CPC”) for permission to file the appeal as indigent persons.

Counsel for the appellants contends that the Punjab State Civil Supplies Corporation Limited, Chandigarh (for brevity “the Corporation”)

filed a suit for recovery of Rs.1,76,72,540/- for shortage and recovery of wheat and other articles alongwith interest at the rate of 15% per annum and the same was decreed by the trial court vide judgment and decree dated 24.2.2011. The appellants preferred appeal against the judgment and decree dated 24.2.2011. Alongwith the appeal, an application was filed for grant of permission to file the appeal as indigent persons by invoking the provisions of Order 33 Rule 3 CPC that came to be dismissed by the first appellate court vide impugned order dated 18.12.2014. It has been argued that the reasoning adopted by the first appellate court in rejecting claim of the appellants that they do not possess sufficient sources to pay the requisite court fee, more than Rs. 4 lacs is unfounded, result of non-application of mind, arbitrary resulting in miscarriage of justice, therefore, the impugned order cannot be allowed to sustain. According to counsel, the court below has taken a serious view of failure of the appellants to disclose a bank account maintained by each of them and one residential house owned by each of the appellants when otherwise, disclosure thereof would neither have any bearing on decision of the application nor would enure to benefit of the respondents. In this regard, counsel would argue that accounts in the bank are maintained by the appellants so that approximately an amount of Rs. 10,000/-per month being paid to them towards provisional pension is remitted in the accounts. One residential house owned by each of the appellants cannot be taken into consideration for the purpose of deciding their liability or otherwise to pay the court fee.

Counsel for the respondents, on the contrary, has submitted that as the appellants were guilty of concealing material facts qua bank accounts

and owning residential houses, they have disentitled themselves to indulgence of the Court or escape their liability to pay the court fee.

I have heard counsel for the parties, perused the paper book particularly the order impugned.

Order 33 CPC deals with suits by indigent persons. The same provisions are applicable if an application is filed by appellant seeking permission to file the appeal as an indigent person. Rule 3 of Order 33 deals with presentation of application and a relevant extract therefrom, germane to the controversy, reads as follows:-

“Presentation of application.-Notwithstanding anything contained in these rules, the application shall be presented to the Court by the applicant, in person, unless he is exempted from appearing in Court, in which case the application may be presented by an authorized agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

Provided that, where there are more plaintiffs than one, it shall be sufficient if the application is presented by one of the plaintiffs.”

As per Rule 3, it is mandatory that the application for permission to sue as an indigent person shall be presented to the Court by the applicant in person unless he is exempted from appearing in the Court. There is nothing on record suggestive of the fact that in the present case the

application was presented by the appellants in person in compliance with the provisions of Rule 3 of Order 33 CPC.

The appellate court framed the following issue for determination:-

“Whether the applicants are indigent persons, if so, its effect?OPA”

Both the petitioners stepped into the witness box in support of their respective claims and tendered certain documents. The court below in view of its observations made in paras 10 and 11 of the impugned order eventually answered the aforesaid issue against the appellants and dismissed their application to file the appeal as indigent persons.

The Court has noticed that Daler Singh has admitted that he has a bank account but no such account has been produced to show the balance at his credit. He is residing in a rental house at Faridkot and is paying rent and thus cannot be said to be not able to pay court fee. He has admitted that he has a house at village Malakpur but he has neither disclosed about his house in village Malakpur or his living in a rental house. The other appellant has concealed his account in State Bank of India, Dugri Branch Ludhiana, his house in Ludhiana, the rent being paid by him for accommodation in Ludhiana, his two sons are living abroad i.e Sweden and Australlia, he has engaged a counsel and never applied for free legal aid.

The failure of the appellants to produce on record their bank accounts, concealment of factum of ownership of houses, non-disclosure of rental being paid for the accommodation in their occupation are the circumstances rightly taken into consideration by the Court in appeal to

doubt bona fides of the appellants that they are not in a position to pay the court fee. This apart, counsel for the appellants submitted before this Court that the appellants have a liability to pay a court fee of more than Rs. 4 lacs but before the appellate court, it was contended that the court fee required to be affixed on the appeal is only Rs. 74,242/-. As the appellants concealed material facts from the court and did not produce their bank accounts, they otherwise have no place to be heard in the matter much less being allowed the relief, as prayed for. In this view of the matter, I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed. No order as to costs.

(Rekha Mittal)
Judge

5.5.2016
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