

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

120

CR No.1367 of 2016 (O&M)

Date of decision: 15.11.2017

Raj Kumari

..... Petitioner

Versus

Punjab State Power Corporation Ltd. and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Aalok Jagga, Advocate
for the petitioner.

Mr. R.L. Sharma, Advocate
for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Challenge is to the order passed by learned Additional District Judge dated 13.01.2016 refusing permission to file an appeal as an indigent person. Learned Additional District Judge has held that applicant has two sons who are alive and partners in the firm and applicant was allotted a plot No.226 measuring 1000 Sq. yards vide allotment letter dated 18.05.83, therefore, petitioner cannot be permitted to file an appeal as an indigent person.

As per Order 44 Rule 1 of the Code of Civil Procedure, any person entitled to prefer an appeal who is unable to pay the fee required for the memorandum of appeal may present an application accompanied by the memorandum of appeal. Order 44 Rule 1 does not provide that assets of other family members are to be taken into consideration while deciding the aforesaid application.

Further, learned counsel for the petitioner has brought attention of the Court to the conveyance deed executed by Punjab Small Industries and Export Corporation Ltd. with respect to industrial plot No.E-226, Phase-IV, Focal Point, Ludhiana. The conveyance deed was executed in favour of one firm M/s Vashisht Forgings.

Learned counsel has further pointed out that the petitioner-applicant was a partner in the aforesaid firm but she retired on 31.03.2011. In the present case, the decree was passed on 05.03.2012. In other words, on the day the decree was passed, petitioner-applicant was not even partner of the aforesaid firm.

Learned counsel for the petitioner has further pointed out that the learned First Appellate Court had asked for the report of the Collector. However, the Collector was unable to give any report because petitioner was not the owner of any property. Thereafter, the Court proceeded to adjudicate upon this issue itself.

Taking into consideration the fact that the petitioner-applicant is neither partner of the partnership firm nor owner of plot No.226 as referred to by the learned Additional District Judge, therefore, this Court is of the considered opinion that the order under challenge is liable to be set aside. Petitioner is granted permission to file an appeal as an indigent person.

Revision petition is allowed.

15.11.2017
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No