IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CR No.2726 of 2017
Date of decision: 26.05.2017

Darshan Singh and others ..Petitioners

Versus

Harbans Kaur and others ..Respondents

2. CR No.2687 of 2017

Darshan Singh and others ..Petitioners

Versus

Harbans Kaur and others ..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. M.S. Tiwana, Advocate
for the petitioners.

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Daya Chaudhary, J.

By this judgment of mine, two cases bearing CR Nos.2726 and 2687 of 2017 shall be disposed of as common question of law and issues are involved. However, for the sake of brevity, the facts are being extracted from CR No.2687 of 2017.

Petitioners, namely, Darshan Singh, Gurmail Singh, Avtar Singh alias Taar Singh and Gurvinder Singh have approached this Court by way of filing CR No.2687 of 2017 to challenge impugned order dated 12.01.2017 (Annexure P-4) passed by the Additional District Judge, Mansa, whereby, the Court has allowed the appeal of the plaintiffs-respondents to pursue their case as indigent persons by reversing the order passed by the trial Court.

Briefly, the facts of the case as made out in the present revision petition are that the respondents-plaintiffs filed a suit under the Fatal Accident Act, 1885. As per allegations of the respondents, the petitioners had caused the death of Bhog Singh, who was husband of respondent No.1 and father of respondents No.2 to 5. Respondents-plaintiffs filed suit for damages as indigent persons under Order 33 Rule 1 CPC. The claim in the suit was for damages amounting to ₹10,00,000/- and the Court fee of ₹15,600/- was levied. The trial Court directed the plaintiffs to pay requisite amount of Court fee vide order dated 09.11.2015 and thereafter, even the period was extended vide order dated 08.12.2015. On account of non-compliance of order regarding levying of the Court fee, the plaint of the plaintiffs was rejected vide order dated 20.01.2016, which was challenged by the plaintiffs by way of filing the appeal, which was allowed vide order dated 12.01.2017 by the Additional District Judge, Mansa, which has been challenged in the present revision petition.

Learned counsel for the petitioners submits that while passing the impugned order, the ratio of law laid down by this Court in ***Ghanshyam Dass Rastogi vs. A.N. Syal, 1961 AIR (P&H) 131*** has not been taken into consideration. Learned counsel further submits that non-disclosure of assets as required by Order 33 Rule 2 CPC would tantamount to a fraud with the Court and the plea of plaintiffs to proceed as a Forma Pauperis is to be rejected. Learned counsel also submits that in the present case, there is a material concealment of the property whereas it should have been disclosed as per provisions of Order 33 Rule 2 CPC. The husband of the plaintiff No.1 was having eight buffaloes and he used to sell milk. Fact regarding existence of other properties and other sources of income have also been concealed whereas those should have been brought on record by the defendants. They were also getting income from pension schemes etc. At the end, learned counsel for the petitioners submits that the impugned order has wrongly been passed by ignoring the legal position as laid down under Order 33 Rule 2 and Order 33 Rule 5 CPC.

Heard arguments of learned counsel for the petitioners and have also perused the impugned order as well as other documents available on the file.

Plaintiffs-respondents Harbans Kaur, Harjinder Singh, Karamjit Kaur, Paramjit Kaur and Satnam Singh filed a suit and also moved an application under Order 33 Rule 1 CPC for grant of compensation of ₹10,00,000/- for loss on account of murder of husband of plaintiff-respondent No.1 and father of plaintiffs-respondents No.2 to 5. It was mentioned in the application that they are poor, helpless and do not have any land/property and their total income is not more than ₹2000/-. The suit was filed in the form of Pauper Suit.

Reply to that application was filed by raising certain objections. It was mentioned in the reply that the plaintiffs are not poor and helpless persons as they are owners of land/property and are having gold, silver jewelry, cash and are capable of affixing Court fee. Said application was dismissed vide order dated 09.11.2015 and plaintiffs were directed to affix Court fee. Said order dated 09.11.2015 was challenged before the

Additional District Judge, Mansa by way of filing appeal, which was allowed and the plaintiffs were allowed and held entitled to institute suit as indigent persons vide order dated 12.01.2017.

Said order dated 12.01.2017 has been challenged in the present revision petition as the appeal of the plaintiffs has wrongly been allowed to pursue the case as indigent persons by reversing the order of trial Court.

Order 33 Rule 2 CPC is relevant for resolving the controversy in hand, which is reproduced as under: -

> *"R.2. Contents of application.- Every Application for permission to sue as an indigent person shall contain the particulars required in regard to Plaints in Suits and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings."*

Order 33 CPC relates to suit filed by indigent persons. The provision of Order 33 Rule 1 CPC have been enacted to enable the poor to seek justice by way of filing suits or appeals without payment of Court fee. The directive principle enlisted in Article 39A of the Constitution of India recognizes this provision. Rule 1 of Order 33 CPC indicates as to who is an indigent person and in whose possession the insufficient means to pay the Court fee is not there. While assessing the "sufficient means", the property exempted from attachment or sale in execution of decree and the subject matter of suit has to be executed. Section 60 CPC from clause (a) to (p) enlists properties, which are exempted from attachment or sale in execution of decree. These properties are to be computed for assessing sufficient means of applicant under Order 33 Rule 1 CPC. In addition to that, it does not include such means on which bare living of parties depends. It is the capacity to raise funds by normal available lawful means.

In the present case, the applicants-plaintiffs are seeking to institute suit claiming compensation against the respondents for illegally causing death of Bhog Singh. Plaintiff-respondent No.1 claims to be widow of Bhog Singh and plaintiffs-respondents No.2 to 5 are claiming to be children of said Bhog Singh. Plaintiffs are not stated to be in possession of any immovable property. The trial Court considered the amount of pension whereas the amount of pension received by widow of deceased was for the purpose of meeting day-to-day needs and expenses and cannot be computed towards assessing the sufficient means. The appellate Court by recording the finding that there was no evidence on record led by the respondents to show that the appellants have source to pay the Court fee prescribed by law for the plaint in the suit, has held that mere receipt of certain allowances from the Government in the exigency of incapacity to make both ends meets do not lead to inference that the respondents-plaintiffs ceased to be indigent persons. The amount of monetary help from the Government cannot be counted towards "sufficient means" as per provisions of Order 33 Rule 1(a) CPC. The finding recorded by the Additional District Judge, Mansa, is reproduced as under: -

> "*16. Further mere receipt of certain allowances from the Government in the exigency of incapacity to make both ends meets do not lead to inference that appellants have ceased to be indigent persons.*

Further such amount of monetary help from the Government is not to be counted towards "sufficient means" stipulated in Order 33 Rule 1(a) CPC. Learned trial Court further erred in taking a figure of Rs.2,000/- as the bench mark for assessing the indigency of appellants. Reading of Order 33 Rule 1 CPC clearly indicates that it comprises of two clauses. Clause (a) relates to a case where Court fee is prescribed under law as payable on the suit and Clause (b) relates to case where no such Court fee is prescribed by law. In the first category, the sufficient means of applicant has to be gone into to find out whether the applicant is unable to pay the Court fee. In the latter case, since no fee is payable on the suit, the bench mark that the applicant does not possess property worth Rs.1000/-has been laid down. Thus, once the appellants have been shown to be not possessed of any sufficient means to raise money to pay the requisite Court fee, the appellants are entitled to institute the suit as an indigent person.

17. As a result of foregoing discussion, the impugned order is patently perverse and illegal and accordingly, the same is hereby set aside. Appeal in hand is allowed. Applicants are entitled to institute the suit as an indigent person. Application to sue as

> *an indigent person is accordingly allowed and it shall be numbered and registered in terms of Order 33 Rule 8 CPC. Copy of the judgment be placed on the file of the learned trial Court and record be remitted. File of this court be consigned to the record room."*

On perusal of finding recorded by the Additional District Judge, Mansa, it can be said that the plaintiffs-respondents are not having sufficient means to pay the Court fee and as such, in case, they are not having sufficient means to pay the requisite Court fee, they are entitled to institute the suit as an indigent persons.

Accordingly, no interference is required in the order passed by the Additional District Judge, Mansa and finding no merit in the submissions made by learned counsel for the petitioners, both the cases i.e., CR Nos.2726 and 2687 of 2017 being devoid of any merit are dismissed.

26.05.2017 **(DAYA CHAUDHARY)**
neetu **JUDGE**

Whether speaking/reasoned Yes

Whether Reportable Yes