

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Revision No.4681 of 2017

Date of Decision : 20.07.2017

Harjinder Singh

...Petitioner

Versus

Prem Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anureet S. Sidhu, Advocate
for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

Defendant-petitioner has filed the present revision petition under Article 227 of the Constitution of India, challenging the order dated 25.05.2017. Learned Additional District Judge, Patiala dismissed the application filed by the petitioner to allow him to file the appeal as an indigent person-forma pauperis.

Learned Additional District Judge after framing issues and allowing the parties to lead evidence, recorded the following finding:

“The onus to prove this issue rests upon the applicant. In order to prove the same the applicant Harjinder Singh himself stepped into the witness box as AW1 and tendered his affidavit Ex.AW/A in his examination in chief. But, during his cross-examination he himself demolished his version by stating that he entered into an agreement to sell with the respondent-plaintiff and he received Rs.20 lakhs as

earnest money from the respondent-plaintiff. He has also admitted that he has 12 bore gun. The value of the said gun is about Rs.5000/-. He has also admitted that two other weapons i.e. 315 bore rifle and .32 bore revolver are also mentioned in his arm licence. He has also admitted that he had one Skoda Car and has sold the same in the year 2005-06. He has also admitted that he is working as Pathi in Gurudwara Sahib Indrapuri. He is having PAN Card and had been filing Income Tax returns. During his cross-examination he has also admitted that he has been doing the work of sale and purchase of Cars etc. He has also admitted that he has two saving bank accounts i.e. one in UCO Bank and second in Bank of India. On the other hand, the respondents have also placed on record copy of the judgment passed by Ld. Rent Controller, Patiala in rent petition titled as Prem Kumar and others Vs. Harjinder Singh and other, which is Ex.RA and in which the learned trial court specifically held in para No.44 of the judgment that an agreement to sell dated 27.3.2008 was executed by the defendant No.1 i.e. Harjinder Singh applicant being owner of the suit property in favour of the respondents-plaintiffs and he had received the earnest money of Rs.23 Lacs from the respondents-plaintiffs. Furthermore, the applicant failed to brought on record the copies of his bank account and Income Tax returns in support of his version, because during his cross-examination he has specifically

admitted that he is having PAN Card and had been filing Income Tax returns and also admitted that he has two saving bank accounts i.e. one in UCO Bank and second in Bank of India. In these circumstances, it cannot be said that the applicant does not have sufficient means to pay the Court fee which is also not substantial one. Accordingly, it is held that the applicant has sufficient means to pay the Court fee and is not an indigent person. Hence, the application for permission to sue as an indigent person is dismissed.”

I have heard learned counsel for the petitioner at length. Even petitioner himself is present in Court.

Learned counsel for the petitioner has asserted that the order is result of misreading of statement made by the petitioner before the Court. Statement made by the petitioner in cross-examination is reproduced as under:

“It is correct that in the present case I entered into an agreement sell with the plaintiff. It is wrong to suggest that I received Rs.27 lacs as earnest money. I received Rs.20 Lacs as earnest money from the plaintiff volunteered out of it Rs.5 Lacs were deposited by the plaintiff in my account. I do not know the name of person in whose name sale deed of shop opposite cremation ground Tripuri has been executed by my son. Bhagat Singh and Bhavishan Singh are my sons. I have only 12 bore gun. The value of the said gun is about 5000/- only.I have only one arms license. Two other weapons .i 315

bore rifle, .32 bore revolver are also in my arms license. Volunteered I have sold the Pistol in the year 2010 and 315 rifle in the year 2011. It is correct that I hold Indian Passport. I have USA visa, UK visa and Shinghan visa for Europe. I have not visited abroad after the year 2001. I never obtained loan for Innova car. It is correct that I had one Skoda car volunteered I have sold the same in the year 2005/06. I am working as Pathi in Gurudwara Sahib Indrapuri. Volunteered I am not permanent employee in Gurudwara Sahib. They use to call me in Gurudwara Sahib in Azad Nagar and Ghuman Nagar. I am having PAN Card and had been filing income tax returns. As on today no four wheeler is registered in my name. It is correct that I have been doing the work of sale and purchase of cars etc. volunteered prior to 2008. It is wrong to suggest that there were 5/7 cases between the parties. The land in question is in the possession of defendant No.5. I do not know if the plaintiff has deposited Rs.60 lacs in the Hon'ble Court as per decree. I do not know the amount of court fee payable on the grounds of appeal. I do not know about the free legal and as such I have not visited the said office. My both children are in India. I have 2 saving bank accounts i.e. one is UCO Bank and 2nd is in Bank of India. I have not brought the pass books of the said accounts. It is wrong to suggest that I have intentionally filed false affidavit or is proclaiming myself as indigent person. It is wrong to

suggest that I filed a appeal as an indigent person only to delay the proceedings. It is wrong to suggest that I have sufficient source to pay the court fee or owns sufficient movable or immovable property. I do not have any mobile phone.”

In my opinion, there is no misreading of evidence by the first Appellate Court. Learned counsel for the petitioner has further argued that the learned Additional District Judge/first Appellate Court did not hold inquiry as required under Order 44 Rule 3 sub-rule (2) of CPC.

In my opinion, even the aforesaid contention is not correct because on receipt of application, first Appellate Court invited reply from the respondent and after taking reply, issues were framed and parties were permitted to lead evidence and learned first Appellate Court has recorded a finding relying upon the statement made by the petitioner/appellant. I do not find any ground to interfere with the same.

The revision petition is dismissed. However, since the petitioner expressed difficulty to arrange the Court fee of Rs.86,750/-, which is to be affixed before the first appeal is entertained. Therefore, the petitioner is granted three months' time from today to deposit the Court fee so that the appeal can be heard and decided on merits.

(ANIL KSHETARPAL)
JUDGE

20.07.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No