

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

-.-

CR 4747 of 2017

Date of decision: 24.07.2017

Prem Singh

..... *Petitioner*

Versus

Gian Singh

.....*Respondent*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Sanjiv Kumar Aggarwal, Advocate
for the petitioner

-.-

Rekha Mittal, J. (Oral)

The present petition directs challenge against order dated 23.03.2017 (Annexure P1) passed by the Additional District Judge, Kaithal whereby application filed by the petitioner (appellant therein) for allowing him to file civil appeal No. 41 of 2015 as pauper, has been dismissed.

Counsel for the petitioner has challenged the impugned order primarily on two grounds. The first submission made by counsel is that the Court of appeal called for a report of the Collector with regard to assets of the petitioner. As per the said report (Annexure P7), the petitioner is recorded to be owner of land measuring 3 kanals 11 marlas and his annual income to be Rs.28,000.00. It is further submitted that as the factum of receipt of an amount of Rs.5,00,000.00 by the petitioner towards earnest money was already on record in view of stand of the petitioner in the written statement filed by him, the Court of appeal was required to rely upon only the report of the Collector in order to uphold entitlement of the petitioner to file the appeal as a pauper.

Another submission made by counsel is that with regard to the petitioner having received Rs.5,00,000 as earnest money, the Court should have provided him an opportunity to adduce evidence if he was still in possession of the amount which was received by him three years prior to institution of the appeal.

I have heard counsel for the petitioner and perused the paper book particularly the order impugned.

Be that as it may, it is undisputed position of the case that the petitioner received Rs.5,00,000.00 as earnest money for sale of his land by way of agreement on the basis whereof, the respondent filed a suit for specific performance of agreement to sell. Perusal of the application (Annexure P4) filed by the petitioner seeking permission to file the appeal as an indigent person would make it evident that there is not even a whisper as to how the petitioner dealt with the amount of Rs.5,00,000.00 admittedly received by him towards earnest money. A relevant extract from para 3 of the application reads as follows:-

“That the appellant/defendant is a very poor man and is not earning anything. He and his wife are dependent upon the old age pension which is paid by the Haryana Govt. and no other movable and immovable assets except the suit land which cannot be sold because of the fact that it is a suit property. The defendant/appellant is pulling on his life with the help of old age pension as mentioned above and the vegetable and food grains sown in the suit land which is less than ½ killa.”

No doubt, the petitioner makes a mention that he does not own or possess any other movable or immovable assets sufficient to pay the Court fee but he has not explained about the sum of Rs.5,00,000.00. Once

the petitioner has not made any averment with regard to amount of Rs.5,00,000.00, there was no occasion for the Court to record any evidence in this regard. In this view of the matter, I do not find any error if the Court of appeal has taken into consideration the amount of Rs.5,00,000.00 for deciding competency of the petitioner to file the appeal as an indigent person or otherwise.

On a query raised by the Court, counsel for the petitioner has informed that the Court fee payable on appeal is Rs.59,000.00, far less than Rs.5,00,000.00 received by him as earnest money. That being so, I do not find any error much less illegality in the impugned order warranting intervention.

Dismissed.

(Rekha Mittal)
Judge

24.07.2017
mohan bimbura

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No