

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

**CR No.5320 of 2017
Date of Decision: 25.09.2017**

Shanti DeviPetitioner

Versus

Rajender Singh Verma ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. N.C. Kinra, Advocate
for the petitioner.

Mr. Rajender Singh Verma
respondent-in-person.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 19.07.2017 passed by Civil Judge (Junior Division), Panchkula whereby an application moved by the respondent for treating him to be an indigent person in the suit was allowed.

[2]. Learned counsel for the petitioner submitted that initially a Civil Suit No.459 of 2014 was filed by the respondent against the petitioner for a decree of possession by way of eviction from House No.1052, Sector 11, Panchkula on the ground that the petitioner has unauthorizedly occupied the same without any authorization or consent on behalf of the respondent. The house was incompletely built without any basic

amenities of electricity, water and sewerage connection.

[3]. In the said suit, an application under Order 7 Rule 11 CPC was filed by the present petitioner being defendant therein for rejection of the plaint on account of non-affixation of *ad valorem* Court fee on the value of the subject matter of the suit.

[4]. The respondent (plaintiff in the said suit) was given two weeks time to make good the deficiency in Court fee and the application filed by the present petitioner was disposed of vide order dated 30.03.2015.

[5]. An application for amendment of the plaint was also filed by the respondent (plaintiff in the said suit). The said prayer was rejected by Civil Judge (Junior Division), Panchkula vide order dated 28.08.2015. Vide order of even date i.e. 28.08.2015, Civil Judge (Junior Division), Panchkula proceeded to reject the plaint on account of not making good the deficiency in Court fee as ordered by the Court on 30.03.2015. The plaint was rejected. Court fee was ordered to be refunded to the plaintiff of the said suit i.e. respondent.

[6]. An appeal was preferred before the District Judge, Panchkula by the respondent. In the said appeal, the respondent stated that he was ready to affix the *ad valorem* Court fee. Since the plaint has already been rejected, therefore, the request was not entertained and the appeal was disposed of

being not maintainable. However, liberty was given to the respondent to file fresh suit against the present petitioner for the relief by affixing requisite Court fee vide order dated 30.09.2015.

[7]. Thereafter, fresh eviction petition was filed by the respondent against the petitioner without affixing the requisite Court fee. Petitioner being the defendant in the said suit again filed an application under Order 7 Rule 11 CPC dated 17.02.2016 for rejection of the plaint dated 06.11.2015.

[8]. Civil Judge (Junior Division), Panchkula vide order dated 02.05.2016 passed the following order, operative part of which is reproduced hereasunder:-

“9. In the instant case the plaintiff argued that the collector rate put forward by the defendant, is not applicable, as the premises is not in a habitable condition. This arguments of the plaintiff bears no substance, merely because, as claimed by the plaintiff, that the suit property is not in a habitable condition, it would not the ground ipso facto for the non applying of collector rate to the suit property. More-so-over, it is the stand of the plaintiff himself that the defendant is in occupation/possession of the suit property, regarding which he has based his suit and claimed relief against the defendant. As per the collector rate prevalent, the collector rate of plot/house in Panchkula, for the year 2014-15, for Sector-11, Panchkula, is Rs.49,000/- per square meter, while it is Rs.50,000/- per square meter for the year 2015-16. Now, admittedly, the plaintiff has

valued the suit to be Rs.36,000/-, for the purposes of the amount on which court fee is payable. The court fee affixed is Rs.1197/-. In light of the aforesaid discussion, clearly the plaintiff has not affixed the court fee as required, under the provisions of Section 7 of the Court Fee Act 1870, the plaintiff is hereby given two weeks time to make good the court fee, as per the collector rate prevalent for the year in which he has preferred the present suit. The application is accordingly disposed of.”

[9]. Apparently, the respondent was given two weeks time to make good the deficiency in Court fee as per Collector's rate prevailing in the year of filing the suit. On 16.05.2016, the Court also passed an order in compliance of order dated 02.05.2016 on the application moved by the respondent to know the amount of proper Court fee payable. Since the exact amount of payable Court fee was not known, the Court apprised the respondent that the deficiency in Court fee was to the tune of Rs.7,17,288/- as per provisions of Court Fee Haryana Amendment Act, 2009 after deducting the amount of Court fee already affixed.

[10]. At that stage, the respondent filed Civil Revision No.4148 of 2016 in the High Court, which was ordered to be dismissed as withdrawn with a liberty to the respondent to file appropriate application before the trial Court on 23.08.2016. Thereafter, respondent filed an application before the trial Court

for being declared as indigent person.

[11]. As per order dated 27.01.2017, the case was fixed for awaiting report of Deputy Commissioner, Panchkula in respect of indigent status of the plaintiff/respondent. Vide letter dated 13.12.2016, Deputy Commissioner, Panchkula had given direction to Sub Divisional Officer (Civil) to furnish information in respect of indigent status of the plaintiff/respondent. At one point of time, the Court showed its displeasure in respect of inaction shown by the Deputy Commissioner and Sub Divisional Officer (Civil) in not obeying the order of the Court promptly. A lenient view was taken thereby granting one more opportunity to them to submit report regarding indigent status of the plaintiff/respondent. Deputy Commissioner was also authorized to delegate its powers in order to have the requisite information.

[12]. Thereafter, vide report dated 08.02.2017 submitted by Patwari, Halqa Majri, the communication was given to the concerned quarter in respect of holdings of the plaintiff/respondent. The report was received by Tehsildar and he in turn, further communicated the same to Sub Divisional Officer (Civil). In this way, the report was received from the hierarchy of channels by the Court.

[13]. Civil Judge (Junior Division), Panchkula ultimately accepted the application vide impugned order dated

19.07.2017. That is how, the petitioner has filed the present revision petition.

[14]. Plaintiff/respondent appeared in person and submitted that the Plot No.1052, Sector 11, Panchkula was allotted to him vide re-allotment letter dated 03.08.1999. The house was partially constructed by the plaintiff/respondent. Thereafter, plaintiff/respondent applied for issuance of partial occupation certificate, but the same was refused by HUDA Authorities vide Memo No.281 dated 06.01.2000 with the endorsement:-

“Refuse permission for the occupation of the said building for violations/reasons given below”.

The reasons ranging from 1 to 9 were given for refusal of such permission in the letter.

[15]. Respondent submitted that HUDA Authority issued a notice of Rs.10.61 crore to one R.K. Garg in respect of occupying the house without seeking completion certificate. Respondent referred to the litigation initiated by the petitioner in the form of criminal complaint under Sections 420, 406, 506, 494 IPC, in which he along with other was summoned by the Judicial Magistrate Ist Class, Chandigarh vide order dated 20.11.2006, but ultimately acquitted by the Court vide judgment of acquittal dated 31.07.2014. Even one civil suit was filed by the present petitioner against the respondent for permanent

injunction in the year 2007, which was ultimately got dismissed in default vide order dated 19.04.2011 passed by Additional Civil Judge (Senior Division), Panchkula.

[16]. By referring to aforesaid, respondent pleaded that when factum of payable Court fee to the tune of Rs.7,17,288/- as conveyed vide order dated 16.05.2016 came to be known by him, he filed the application for being declared as indigent person after obtaining order of withdrawal of Civil Revision No.4148 of 2016 with a liberty to file an appropriate application before the trial Court. After filing of the application and on the basis of necessary reports submitted by revenue officers/officials in hierarchy, trial Court has lawfully granted the status of indigent person in favour of the respondent. Respondent further contended that on coming to know about the requirement of huge Court fee, he proceeded to make necessary challenge and after obtaining liberty from the High Court, filed the necessary application before the trial Court. In view of above, the orders earlier passed and readiness of the respondent to pay the requisite Court fee at one point of time was duly explained on record and the order passed under Order 33 Rule 1 CPC cannot be faulted with at this juncture.

[17]. I have considered the submissions made at the bar.

[18]. The litigation is between the husband and wife. The

petitioner/wife has occupied the unbuilt house without there being any issuance of occupation certificate by the competent authority. The occupation of the house without there being any permission for occupation may entail in some penal action by the department. On coming to know the requirement of payment of huge Court fee to the tune of Rs.7,17,288/-, the earlier readiness and willingness shown by the respondent was sought to be explained. Respondent pleaded that he has no means/resources to pay any such Court fee as was pointed out by the trial Court vide order dated 16.05.2016, therefore, he took corrective steps for explaining his earlier conduct in the context of prevailing circumstances for which penal consequences at the hands of HUDA were perceived by him. Since the petitioner/wife has occupied the unbuilt house without issuance of occupation certificate, therefore, respondent sought to evict her on the ground available to him.

[19]. In my considered opinion, the issue of payment of Court fee is exclusively between the plaintiff of the suit and the Court. Defendant in the suit has nothing much to object. The respondent has made out a case for granting him the status of indigent person in terms of Order 33 Rule 1 CPC in view of peculiar facts and circumstances of the case.

[20]. In view of above, I find no error of jurisdiction in the

impugned order dated 19.07.2017 passed by Civil Judge (Junior Division), Panchkula. This revision petition is accordingly dismissed.

25.09.2017
prince
Whether Reasoned/Speaking

Whether Reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No