

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

-.-

Civil Revision 5335 of 2017
Date of decision: 20.09.2017

Subhash Kumar and others *Petitioners*

Versus

Ritika and another *Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Sanjeev Kumar Bawa, Advocate
for the petitioners

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Rekha Mittal, J. (Oral)

The present petition directs challenge against order dated 03.02.2017 (Annexure P1) passed by the Additional Civil Judge (Senior Division) Phul whereby the respondents/plaintiffs have been granted permission to sue in forma pauperis for recovery of Rs.30,00,000.00 from the petitioners, members of family of maternal grand parents of the respondents/plaintiffs - Ritika and Pallavi, minors.

Counsel for the petitioners has submitted that Ritika and Pallavi have filed the suit for recovery through their grand mother namely Darshana Devi, mother of their father Vijay Kumar. In the application filed under Order 33 Rule 1 of the Code of Civil Procedure (in short, CPC) for permission to file the suit in forma pauperis, details of the properties stated to be owned by the minors have been given and the property owned by plaintiff No. 1 is valued at Rs.850.00 whereas property of plaintiff No. 2 is valued at Rs.950.00 and the said properties include garments, shoes and

books etc. of the respondents/plaintiffs. It is argued with vehemence that as the respondents/plaintiffs are co-owners of house property measuring 15'x60', so admitted by the respondents/plaintiffs in reply to application filed by the petitioners under Order 33 Rule 5 CPC, the respondents/plaintiffs are guilty of concealing a material fact from the Court, thus, the order passed by the trial Court permitting the respondents/plaintiffs to sue as indigent persons is liable to be set aside with a direction to the respondents to pay ad valorem Court fee on the suit amount. In support of his contention, he has relied upon judgment of the Karnatka High Court ***Doddananjappa and others v The Sub Registrar, Hoskote, Bangalore and others 2003 AIR (Karnataka) 205.***

I have heard counsel for the petitioners and perused the paper book particularly various annexures appended with the petition.

Be that as it may, Ritika and Pallavi minor daughters of Vijay Kumar have filed the suit through their grand mother Darshana Devi. On a query by the Court, Counsel for the petitioners has fairly informed that even if the house is taken into consideration for the purpose of deciding eligibility of the respondents/plaintiffs to sue as indigent persons, the said house will not have an adverse effect on claim of the minors to sue in forma pauperis.

The minors through their grand mother, in reply to the application under Order 33 Rule 5 CPC filed by the petitioners have categorically pleaded that they are owners of property measuring 15"x60' but they are not deriving any income from the said property and the same is in illegal possession of their mother Parveen Rani who has connived with the defendants. Another plea raised by the minors is that they cannot sell

the property until they attain the age of majority, so they have no source of income. No doubt, Darshana Devi grand mother of the minors should have disclosed ownership of a house by the minors but the mere fact that Darshana Devi did not disclose that fact is not sufficient to put the minors to disadvantage despite that the house property cannot be taken into account for adjudging entitlement of the respondents/plaintiffs to sue as indigent persons. As such, the petitioners cannot derive any advantage to their contention from the referred authority. In this view of the matter, I find myself unable to accept contention of the petitioners that the impugned order is liable to be set aside and the respondents/plaintiffs be directed to pay ad valorem Court fee.

For the foregoing reasons, the petition fails and is accordingly dismissed *in limine*.

(Rekha Mittal)
Judge

20.09.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No