

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

CR No.7516 of 2017(O&M)

Date of decision: 15.11.2017

Rakesh Kumar

.....Petitioner

VERSUS

Ashok Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rahul Rampal, Advocate for the petitioner.

REKHA MITTAL, J.(Oral)

The present petition directs challenge against order dated 19.04.2017 passed by the Civil Judge (Junior Division), Ludhiana whereby application filed by the petitioner/plaintiff for conducting DNA test to establish paternity of defendants No.2 and 3 who are stated to be sons of Mangat Rai and not of Om Parkash, father of the petitioner has been dismissed.

Perusal of the impugned order reveals that the application for conducting DNA test was filed before adducing any other evidence by the petitioner. The trial Court in concluding lines of the impugned order has held, reads thus:-

“...No doubt, in the present case, paternity of defendant no.2 and no.3 is in dispute, but it does not mean that the only resort available to the plaintiff is DNA Test. Apart from DNA Test there are other form of evidence also from which paternity of the defendant no.2 and no.3 can be proved. So, at this stage, application in hand cannot be allowed as it is very much premature. Moreover, it is incumbent upon the plaintiff to stands (sic) its own leg, the plaintiff cannot escape from his liability i.e. to prove his case by leading evidence. Hence, application in hand stands hereby dismissed.”

Perusal of the aforesaid extract leaves no manner of doubt that though the trial Court has made observations with regard to settled position in law that it is obligatory for the plaintiff to establish his case by adducing evidence but at the same time observed that the application in hand cannot be allowed at this stage as the same is pre-mature. Meaning thereby that the petitioner may file an application for the relief claimed after adducing other evidence, prima facie establishing his plea that defendants No.2 and 3 are not the sons of Om Parkash.

With the aforesaid observations, the present petition stands disposed of.

NOVEMBER 15, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no