

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

CR No.7939 of 2016.

Date of Decision: 07.02.2017.

Ashwani Kumar

....Petitioner.

VERSUS

Balbir Kaur and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Amardeep Singh Gill, Advocate for the petitioner.

SNEH PRASHAR, J.

Assailing the order dated 19.07.2016 passed by learned District Judge (Family Court), SBS Nagar by virtue of which the application filed by the respondents-plaintiffs under Order XXXIII Rule 1 of the Code of Civil Procedure (for short, "CPC") seeking permission to sue as indigent persons in a suit for maintenance under Sections 18 and 20 of the Hindu Adoption and Maintenance Act (for short, "the Act"), was allowed.

The submissions made by Mr. Amardeep Singh Gill, learned counsel for the petitioner have been considered.

Learned counsel for the petitioner argued that under Order XXXIII Rule 6 CPC, it is mandatory to issue notice of application filed under Order XXXIII Rule 1 CPC to the opposite party as well as to the Government Pleader and Order XXXIII Rule 7 CPC postulates that opportunity to lead evidence should be given to both the parties in proof of

indigence of the plaintiffs and in disproof thereof. However, in the instant case, learned trial Court did not follow the procedure provided under Order XXXIII Rules 6 and 7 CPC before allowing the application of the respondents to sue as indigent persons. No notice to the Government Pleader was given and he was also not called upon to produce evidence, if any, to disprove that the respondents were not indigent persons. To support his argument, learned counsel relied upon **Bishamber Lal & Anr. vs. Shanti Pershad Jaiswal & Ors., 2013(1) Civil Court Cases 327.**

The judgment passed in **Bishamber Lal & Anr.**'s case (supra) is completely distinguishable on facts from the instant case. The case in hand is a suit for maintenance under Sections 18 and 20 of the Act filed by respondents who are none else but wife and minor daughter of the petitioner. Further, perusal of the impugned order shows that due notice of the application filed by the respondents seeking to sue as indigent persons was given to the petitioner. He appeared and contested the application. Learned trial Court then framed issues on the rival contentions of the parties and gave both the parties adequate opportunity to substantiate their respective pleas.

With all fairness, during the course of arguments, learned counsel for the petitioner conceded that learned trial Court had called for the report from the Collector on the application filed by the respondents under Order XXXIII Rule 1 CPC. From the above facts, it is evident that in compliance of Order XXXIII Rules 6 and 7 CPC not only notice of the application of the respondents-plaintiffs was given to the petitioner-defendant, but notice was also given to the Collector/ Government Pleader.

petitioner by adducing evidence etc., learned trial Court allowed the application and permitted the respondents to sue as indigent persons. It is not the case of the petitioner that either as per the Collector report or as per the evidence led by him during trial of the application, the respondents own any movable or immovable property.

The impugned order allowing the respondents to sue as indigent persons was passed in due process of law. There being no illegality or perversity in the impugned order, interference by this Court is not called for and the petition is dismissed.

07.02.2017.
jitender sharma

(SNEH PRASHAR)
JUDGE

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**