

Civil Revision No. 8761 of 2015 (O&M)

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

Civil Revision No. 8761 of 2015 (O&M)

Date of decision: 1.2.2017

Shalender Kumar and another

... Petitioners

Vs.

Umesh Kumar Mittal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Gaurav Sethi, Advocate
for the petitioners.

Mr. H.R.Bhardwaj, Advocate
for respondents No.1 and 2.

Ms. Jasleen Chandhok, Advocate
for respondent No.3.

RAMESHWAR SINGH MALIK, J. (Oral)

Present revision petition is directed against the impugned order dated 6.11.2015 (Annexure P-1), passed by learned Additional District Judge, whereby application of the petitioners moved under Order 44 Rule 1 of the Code of Civil Procedure, seeking permission to file appeal as indigent persons, was dismissed.

Notice of motion was issued.

Heard learned counsel for the parties.

Relevant part of the impugned order passed by learned first appellate court, reads as under:-

“There is an application under Order 44

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Rule 1 CPC seeking permission to file the appeal as indigent persons. Appellant No.1 Shalender Kumar, present in Court, made statement to the effect that he is employed at a shop and use to repair bags and getting Rs. 85,00/- per month as salary. Appellant No.2 Ravi Shankar, present in Court, also made statement to the effect that he is working in a factory, which manufactures surgical instruments and getting Rs. 7000/- per month as salary.

Considering the statements made by appellants, this Court is of the view that appellants are in a position to pay the Court fee and they cannot be allowed to pursue their appeal as indigent persons. Accordingly, application is dismissed. Case is adjourned to 5.12.2015.”

During the course of hearing, learned counsel for the petitioners could not point out any patent illegality or perversity in the impugned order, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction. So far as judgment of this Court in **Santa Vs. Jarnail Singh, 2010 (5) Law Herald 3962**, relied upon by learned counsel for the petitioners is concerned, there is no dispute about the observations made therein. However, a close perusal of the cited judgment would show that it is of no help to the petitioners, being distinguishable on facts.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit**

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Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.

Once the petitioners have been found to be persons of means, having regular monthly source of income, learned first appellate court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld. Under the circumstances of the case, noticed hereinabove, it can be safely concluded that neither the impugned order has been found suffering from any patent illegality, nor learned court committed any error of law, while passing the impugned order and the same deserves to be upheld, for this reason also.

No other argument was raised

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

1.2.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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