

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

CR No. 8442 of 2017(O&M)

Date of decision: 15.12.2017

Parshotam Singh

.....Petitioner

VERSUS

Kulwinder Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. S.K. Arora, Advocate for the petitioner.

REKHA MITTAL, J.

CM No.26814-CII of 2017

Heard.

Allowed as prayed for.

Annexure P-5 is taken on record subject to just exceptions.

Disposed of accordingly.

CR No.8442 of 2017

The present petition directs challenge against order dated 10.10.2017 (Annexure P-1) passed by the Additional District Judge, Faridkot whereby application filed by the petitioner/defendant for permission to file appeal against the judgment and decree passed by the trial Court as an indigent person has been dismissed and the petitioner has been directed to pay appropriate Court fee of approximately Rs.1,91,000/-.

Counsel for the petitioner has submitted that the petitioner is owner of land measuring 50 kanals 17 marlas i.e. subject matter of *lis* and exempted from payment of Court fee and a residential house which also cannot be taken into consideration for judging his capacity to pay Court fee

or otherwise. It is further argued that the learned Appellate Court has wrongly rejected application for permission to file the appeal as an indigent person by taking into consideration income from the aforesaid land which otherwise may not be sufficient to meet livelihood of the petitioner and his family. Another submission made by counsel is that the Court below has misconstrued statement of the petitioner whereby he offered to refund the amount of Rs.10 lakhs, admittedly taken from the respondents/plaintiffs but the petitioner intended to return the money if he was permitted to sell the suit property or part thereof. It is prayed that the order impugned may be set aside and the petitioner be permitted to file the appeal without payment of Court fee.

I have heard counsel for the petitioner, perused the paper-book particularly his testimony as AW-1 recorded to establish his plea to file the appeal as an indigent person.

The petitioner tendered into evidence his affidavit Ex.AW1/A by way of examination in chief and in para 2 of the affidavit, he has deposed that he has no other movable or immovable property except the residential house and the land subject matter of the suit and no other income except agriculture from which he is able to meet expenses of his family. Indisputably, the petitioner received an amount of Rs.10 lakhs from the contesting party though he raised a plea in defence that he took money for treatment of his son. In the proceedings to file the appeal as an indigent person, there is no explanation with regard to availability/utilization of Rs.10 lakhs in order to establish that the said money is not with the petitioner to enable him to pay the Court fee, less than Rs.2 lakhs. In his cross examination, the petitioner has stated to the following effect:-

“I had taken Rs.10 lakh at the time of making agreement. I had not returned the money to plaintiff, volunteered I had offered to return of money.”

There is no explanation as to how the petitioner intended to repay Rs.10 lakhs in view of his offer to return the money much less that he offered to return the money after selling suit land or a part thereof. In this view of the matter, plea of the petitioner that he does not have means to pay the Court fee or is entitled to file the appeal as an indigent person is not meritorious and has rightly been rejected by the Court below.

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

DECEMBER 15, 2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no