

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

**CIVIL REVISION No. 8808 of 2016
DECIDED ON: APRIL 18, 2017**

KASHMIR SINGH & OTHERS

.....PETITIONERS

VERSUS

HARMESH SINGH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. G.S. Simble, Advocate
for the petitioners.

JASPAL SINGH, J

By virtue of instant revision preferred under Article 227 of the Constitution of India, petitioners have sought the setting aside of order dated September 30, 2016 (Annexure P-3) passed by learned Additional Civil Judge (Sr. Division), Batala whereby, the respondent-plaintiff has been allowed to sue and pursue with the suit as an indigent person.

The facts giving rise to the instant revision are that respondent-plaintiff filed a suit for recovery of 50,00,000/- and alongwith plaint respondent-plaintiff moved an application under Order XXXIII Rule 1 read with Order VII Rule 1 of the Code of Civil Procedure (for short

'Code') for the grant of necessary permission to sue as an indigent person claiming that he is not possessed of sufficient means to pay the requisite court fee on the plaint. The said application was allowed vide impugned order dated September 30, 2016, which necessitated the filing of instant revision.

While assailing the impugned order it has been argued with vehemence by learned counsel for the petitioners that the learned trial Court has not appreciated the evidence of RW-1 Kashmir Singh, who has clearly deposed that his brother Shiv Singh father of respondent/plaintiff died on December 18, 2013 and further that during his life time he executed a registered Will in favour of respondent-plaintiff and his brothers who inherited the entire property of their father Shiv Singh. The learned trial Court has also ignored the fact that all the three brothers are residing in joint family and cultivating the share of their father Shiv Singh measuring 62 kanals and 10 Marlas. This fact proves from beyond doubt that respondent-plaintiff has sufficient means to affix requisite court fee.

Learned counsel for the petitioners has further urged that learned trial Court has also ignored the copy of Hakiat for the year 2008-2009 as well as jamabandi for the year 2013-2014, in which the properties owned by Shiv Singh have been clearly depicted. Similarly, registered Will executed by Shiv Singh in favour of his sons has also not been taken into consideration, which has resulted into miscarriage of justice. Moreover, learned trial Court has wrongly relied upon the report of the

Collector, which is not in accordance with the revenue record, according to which respondent-plaintiff owns sufficient property in his name. Thus, the impugned order is not sustainable in the eyes of law and is liable to be set aside. Consequently, respondent-plaintiff is liable to affix the requisite court fee in accordance with law and on account of non-payment of requisite court fee, plaint is liable to be rejected.

This Court has given an anxious thought to the afore-said submissions made by learned counsel for the petitioners but find the same to be of without legal or factual substance, in view of evidence available on file.

The suit for recovery by way of damages has been filed by respondent-plaintiff through his wife Ranjit Kaur who stepped in the witness box as AW-1, as is evident from the impugned order. While appearing in the witness box she deposed that her husband Harmesh Singh-respondent-plaintiff is in Comma and is unable to proceed with the suit. Since the date of occurrence i.e. August 23, 2011 her husband is in Comma, who is otherwise having no immovable or movable property in his name. Though, her statement further finds corroboration from the testimony of PW-2 Arjun Singh. Though the petitioners have produced on record the copy of registered Will executed by Shiv Singh father of respondent-plaintiff in favour of his three sons including respondent-plaintiff as well as copy of Fard Haqiat for the year 2008-2009 as well as jamabandi for the year 2013-2014 in which the property has been shown in

the name of Shiv Singh but no mutation etc. on the basis of Will has so far been incorporated and sanctioned. Otherwise also respondent-plaintiff, who is in Comma and is unable to pursue with the proceedings. It is also established on record that respondent-plaintiff has no source of income. Further more report of Collector clearly corroborate the facts unfolded by Ranjit Kaur AW-1 that there is no property owned by respondent-plaintiff at village Khallipur, Tehsil Dera Baba Nanak and he has no sufficient source of income. Moreover, in the case of **O.P. Neelam Hosiery Works v. State Bank of India; AIR 1994 HP**, the High Court of Himachal Pradesh has observed that “indigent person” means the person in possession of sufficient means but does not own or possess sufficient property. It does not include the means, on which, the bare living of the party and his family depends. In the instant case, there is no evidence to establish that respondent-plaintiff is having sufficient means of income. The mere fact that the father of respondent-plaintiff was owner of some land and has executed a registered Will in favour of his son(s) does not *ipso facto* mean that respondent-plaintiff has the means to affix the requisite court fee.

Moreover, if at all this fact is proved, the Court fee can be ordered to be recovered at the time of disposal of suit. Thus, the impugned order is absolutely in consonance with the evidence available on file as well as legal proposition and calls for no interference by this Court. It can be safely concluded that it does not suffer from any infirmity, illegality or

perversity.

In the light of what has been discussed above, this Court does not find any merit in the instant revision. As such, it stands dismissed.

JASPAL SINGH
JUDGE

APRIL 18, 2017
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<i>Whether speaking/non-speaking</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>