

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.2067 of 2016
Date of Decision: May 30, 2018

State Bank of Patiala, Jind

...Petitioner

Versus

M/s Shri Balaji Contractor & Suppliers Indira Bazar, Jind & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.R.S.Bhatia, Advocate,
for the petitioner.

Mr.Aalok Jagga, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

Present revision is directed against the order dated 18.1.2016, whereby the objections of the petitioner-bank against the order dated 5.7.2014 allowing the application of the respondent-plaintiffs to pursue the suit as an indigent person, have been dismissed.

Mr.R.S.Bhatia, learned counsel for the petitioners submitted that the respondent-plaintiffs instituted the suit for adjustment of the value of goods worth 21,00,000/- along with interest w.e.f. 21.4.2011 till adjustment in the outstanding amount of CC Limit of the plaintiff firm in Current A/C No.65013388552 or in the alternative recovery of the aforementioned amount.

Along with the suit, an application under Order 33 CPC for continuing with the suit as an indigent person to exempt for payment of the

court fees was submitted. The Court after seeking the report from the Collector, vide order dated 5.7.2014 (Annexure P-1) without issuing notice to the bank, allowed the application. On acquiring the knowledge, the objections were filed which have erroneously been dismissed. He submitted that the Court has not adhered to the provisions of Rule 6 of Order 33 CPC, for, it was specifically objected in the objections regarding the ownership of the properties, though few of them were mortgaged with the bank, but after filing of the objections, acquired the knowledge that the respondent-plaintiffs are running the Karyana shop and photographs to that effect have been annexed as Annexure P-13 and, thus, urged this Court for setting-aside the order as the same is bereft of any reasoning.

Mr.Aalok Jagga, learned counsel for respondent No.1-plaintiff submitted that photographs do not show the ownership of the shop or convey whether the respondent-plaintiff is carrying on the business of Karyana. The other two properties, referred to in the objection petition, have already been mortgaged with the bank and even possession under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has already been taken. No useful purpose would be served in remanding the matter even if the trial Court had not assigned sufficient reasons while dismissing the objections.

I have heard the learned counsel for the parties and appraised the paper book.

Rule 6 of Order 33 CPC is reproduced as under:-

“6. Notice of day for receiving evidence of applicant’s indigency.- Where the court sees no reason to reject the application on any of the grounds stated in rule 5, it shall fix a day (of which at least ten days’ clear notice shall be given to

the opposite party and the government pleader) for receiving such evidence as the applicant may adduce in proof of his indigency, and for hearing any evidence which may be adduced in disproof thereof.”

It would be apt to reproduce the order dated 5.7.2014, whereby the application for filing the suit as indigent person has been allowed. The same reads thus:-

“Shri Balaji etc. Vs. State Bank of Patiala

Present: Plaintiff in person.

Heard. In view of report regarding pauperis/indigent person of plaintiff filed by Suresh Kumar Patwari, M.C.Jind, the applicant Sadhu Ram is hereby declared pauperis/indigent persons. The suit be checked and registered. Now notice of the present suit be served upon defendant for 28.8.2014 on filing copies of summons etc. Summons be given dasti, if required.

The operative part of impugned order, whereby the objections have been dismissed, is reproduced as under:-

“After hearing rival contentions, going through contents of application and going through case file thoroughly this Court is of the considered view that vide order dated 05.07.2014 passed by my Ld. Predecessor Court, the applicant Sadhuran had already been declared as indigent person and suit has already been declared as indigent person and suit has already been registered. Also being satisfied by the reply filed by plaintiff/respondent, the application in hand is dismissed and disposed off accordingly. Now to come upon 04-02-2016 for filing written statement.”

On perusal of the aforementioned reasoning assigned, I am of the view that the order is bereft of compliance of provisions of Rule 6 of Order 33 CPC for adjudication whether the predecessor court had adhered to the aforementioned provisions or not. The trial Court was enjoined upon

an obligation to deal with the objections extensively by assigning reasons, but not in the manner and mode as indicated above. It may lead to a situation where the Bank is able to produce certain evidence with regard to the financial capacity of the respondent-plaintiff for belying the report of the Collector as indigent person.

Resultantly, the impugned order is set-aside. Matter is remitted to the trial Court to decide the objections afresh within a period of one month from the date of receipt of certified copy of this order.

Revision petition stands allowed.

May 30, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No