

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

Civil Revision no.4245 of 2016

Date of decision : 04.07.2018

Ramu Yadav and another

... Petitioners

Versus

Sarvesh Jaiswal

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Shery Goel, Advocate,
for the petitioners.

Mr. Aksay Jindal, Advocate,
for the respondent.

AMOL RATTAN SINGH, J.

By this petition, the petitioners have challenged the order of the learned appellate Court (Additional District Judge, Karnal), passed on 09.05.2016, by which an application filed by the petitioners, seeking to be allowed to proceed as indigent persons, in the appeal before that Court (against a judgment and decree of the learned Civil Judge (Senior Division), Karnal, dated 30.08.2013), has been dismissed.

The application, filed under Order 44 Rule 1 read with Order 33 Rule 1 CPC, has been dismissed on the ground that an indigent person is one who does not have an income of more than Rs.2000/- per month, whereas actually the petitioners had a house from which they were earning Rs.7000/- per month, as admitted in cross-examination, and that petitioner no.1 herein was working as a screen printer, with his wife (petitioner no.2) assisting him in the said work, with him also paying a monthly installment of Rs.5000/- qua the loan taken by him from the Oriental Bank of

Commerce, Karnal, and further, that his cross-examination revealed that “he could not resist to excel the truth” and a bare look at such cross-examination showed that the calculation of his earnings and expenditure amply revealed that he was not an indigent person. Lastly, it was held that he does not possess a BPL (Below Poverty Line) ration card.

The contention of the Ist appellant that the house he owns cannot be considered for the purpose of declaring him to be an indigent person in terms of Section 60 of the CPC, was an argument that was rejected by the appellate Court, holding that the provisions of Section 60 only apply in the case of execution proceedings and not otherwise, and therefore with him even repaying a loan @ Rs.5000/- per month, he could not be considered to be an indigent person, who could be exempted from affixation of Court fee, *ad valorem*.

Before this Court, Mr. Shrey Goel, learned counsel appearing for the petitioners, first submitted that the learned appellate Court has wholly erred in holding that Section 60 of the CPC would not be applicable as regards the house of the petitioners, because a bare reading of clause (a) of Rule 1 of Order 33 reveals that property as is exempt from attachment in execution of a decree, if it is the subject matter of the suit, cannot be taken into consideration for declaring anyone as an indigent person. He submitted that consequently, the entire premise of the learned appellate Court is based on an erroneous foundation.

Mr. Akshay Jindal, learned counsel appearing for the respondent, on the other hand pointed to the fact that admittedly the petitioners were earning at least Rs.7000/- per month, and actually it could not be accepted that they were paying a monthly installment of Rs.5000/-

and were therefore left with only Rs.2000/- to run their entire household expenses; and therefore, the appellate Court, vide its impugned order, has specifically referred to the fact that in the 1st petitioners' cross-examination he could not deny his earnings and expenditure, with that Court therefore coming to the conclusion that the petitioners were not indigent persons by any chance.

Learned counsel further submitted that even the suit filed by the respondent herein, against the petitioners, seeking specific performance of the contract entered into between the parties, was not defended by the petitioners as indigent persons, which further showed that they actually had sufficient means to even contest the appeal by affixing Court fee *ad valorem*.

Having considered the aforesaid arguments as also impugned order, I agree with learned counsel for the respondent that with the petitioners paying Rs.5000/- as monthly installments towards the loan taken by them from the bank, it could not be accepted that they were living only on Rs.2000/- per month, with the appellate Court having specifically held that in his cross-examination, petitioner no.1 herein (Ramu Yadav) had revealed his income and expenditure, thereby showing that he was not an indigent person at all.

Thus though I agree with learned counsel for the petitioners that the lower Court has erred in its interpretation of Section 60 of the CPC, read with Order 31, Rule 1 (a), however, learned counsel not having been able to explain as to how the petitioners were surviving on just Rs.2000/- per month, despite which they were paying an installment of Rs.5000/- per month, and as to how the finding on the income and expenditure, as reached

by the lower Court on the basis of the cross-examination of the Ist petitioner, I see no reason to reverse that order.

Further, they also not having contested the suit filed by the respondent herein against them, as indigent persons, I see no ground to entertain this petition. Consequently, finding no merit in it, it is dismissed.

(AMOL RATTAN SINGH)
JUDGE

July 02, 2018.
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Whether speaking / reasoned	Yes
Whether reportable	Yes