

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

**CR No.7236 of 2016(O&M)
Date of Decision: 03.10.2018**

Prem Kumar and others

.....Petitioners

Versus

Pamila and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Inveet Singh Pabla, Advocate
for the petitioners.

Mr. Sandeep Singh Ghangas, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this revision petition against the order dated 26.09.2016 passed by Civil Judge (Senior Division), Panipat, whereby application under Order 33 CPC filed by the plaintiff/respondent for allowing her to file the recovery suit as an indigent person was allowed.

[2]. Plaintiff/respondent is the wife of petitioner No.1. She filed a suit for recovery of Rs.1,01,91,824/- with interest @ 18% per annum. Along with suit, an application under Order 33 CPC for filing the suit as an indigent person was also filed. Along with the application, schedule of properties owned and possessed by

the plaintiff was attached along with the affidavit of the plaintiff.

[3]. Defendants No.1 to 3 filed objections to the application under Order 33 CPC. Objections No.3 and 4 are to the following effect:-

“3. That the plaintiff had sufficient amount in her bank account No.129701000006550 with Indian Overseas Bank Sector 11, HUDA, Panipat, besides she also received an amount of Rs.4,40,000/- during May 2015 to September 2015 as maintenance pendente lite @ 20,000/- per month from defendant No.1 and an amount of Rs.1.50 lacs is to be paid by the defendant No.1 on 31.10.2015. The plaintiff is also earning handsome amount by doing tuition work and also owns movable properties like gold and diamond jewelry worth Rs.10 lacs.

4. That the plaintiff has filed a false and frivolous application regarding her status as pauper/indigent person and filed a false affidavit regarding her assets to avoid payment of Court fee and also obtained a false report of being indigent person in connivance with the Tehsildar/Revenue Official, Panipat, which is not tenable in the eyes of law and same is liable to be brushed aside.”

[4]. Plaintiff controverted the objections filed by defendants No.1 to 3 by way of filing reply to the objections.

[5]. Trial Court vide order dated 26.09.2016, dismissed the objections filed by defendants No.1 to 3 on the application of pauper under Order 33 CPC on the ground that though the

defendants had mentioned that the plaintiff was in possession of moveable property worth Rs.10 lacs, but the said plea was not supported by any material, nor the objections were supported by any affidavit. Report of the Collector was relied. The maintenance awarded to the plaintiff was exempted from the assessment of income.

[6]. Before passing the impugned order, a report of the Collector regarding possession of moveable and immoveable properties by the plaintiff was asked. As per report submitted by the Collector, the plaintiff does not possess any immoveable or moveable property in her name.

[7]. The application was allowed vide order dated 13.05.2015 by the trial Court. The aforesaid order was passed at the initial stage and thereafter, notice of the suit was issued to the defendants on filing process fee. Subsequently, on the objections filed by defendants No.1 to 3, the impugned order came to be passed. Order dated 13.05.2015 passed by the trial Court has not been assailed in the present revision petition.

[8]. I have heard learned counsel for the parties.

[9]. Learned counsel for the petitioners submitted that in view of Order 33 Rules 6 and 7 CPC, it was mandatory to issue notice of the application to the petitioners as well as to the Government Pleader. An opportunity of leading evidence was

required to be afforded to the petitioners to disprove the indigency of the plaintiff.

[10]. Learned counsel submitted that the plea raised on the strength of Order 33 Rule 6 CPC is a legal plea and can be raised at any stage. On the mandatory nature of compliance under Order 33 Rules 6 and 7 CPC, learned counsel relied upon **Bishamber Lal and another Vs. Shanti Pershad Jaiswal and others, 2013(1) RCR (Civil) 581.**

[11]. In the instant case, the application was allowed at the initial stage without issuing notice to the defendants vide order dated 13.05.2015 on the basis of report of Collector regarding possession of moveable and immoveable property by the plaintiff.

[12]. Perusal of the objections would show that defendants No.1 to 3 have not adverted to the aforesaid order dated 13.05.2015 in any manner, nor the objections in terms of Order 33 Rule 6 CPC have been taken in the objections. While arguing the objections before the trial Court, no such argument was raised. Perusal of para Nos.3 and 4 as reproduced in earlier part of the order would show that no such objection was pleaded, nor the same was adverted to during course of arguments before the trial Court. Petitioners have not mentioned the details of properties owned and possessed by the plaintiff in

the objections before the trial Court.

[13]. There is no dispute with regard to the proposition as held by the High Court. Compliance of Order 33 Rules 6 and 7 CPC is mandatory when such an issue is raised. Perusal of the objections would negate such a plea ever raised by the objectors/petitioners in the objections as well as during course of arguments before the trial Court. No details of properties were made available before the trial Court in the objections. The existence of moveable and immoveable properties in the name of the plaintiff is a question of fact. The ratio laid down in **Bishamber Lal and another's case (supra)** cannot be applied on a question of fact which was neither pleaded by the petitioners in the objections, nor argued before the trial Court at the time of passing of impugned order. The objectors were in the knowledge of the order dated 13.05.2015 passed by the trial Court at the initial stage when the application of the plaintiff for filing the suit as an indigent person was allowed on the basis of report of the Collector. Report of the Collector was never challenged, nor the order dated 13.05.2015 was ever questioned by the defendants/objectors No.1 to 3. The availability of assets (moveable or immoveable) with the plaintiff is a fact to be countered or proved by the party asserting the same against the plaintiff. Defendants/petitioners being the

party denying the status of the plaintiff as that of indigent person and were under legal obligation to plead and prove the solvent status of the plaintiff.

[14]. The impugned order was passed on the objections filed by the defendants/petitioners. Objections were totally wanting on legal parameters and did not disclose the details of properties owned and possessed by the plaintiff, nor the ingredients of Order 33 CPC were pleaded.

[15]. Learned counsel for the respondent with reference to **Surjit Singh Vs. Surinder Kaur @ Saranjit Kaur and another, 2011(1) Law Herald (P&H) 370** pleaded that application under Order 33 Rules 1 and 2 CPC can be allowed on the basis of report of Collector.

[16]. Having considered the submissions made by learned counsel for parties, I find that the objections filed by the petitioners were conspicuously silent with regard to moveable and immoveable assets available with the plaintiff. No such plea under Order 33 Rule 6 CPC was ever taken by the petitioners in the objections, nor such plea was addressed before the trial Court at the time of passing of the impugned order. Availability of assets with the plaintiff is a question of fact. Without disclosing such a plea even on a prior note, the objectors cannot be allowed to argue the case on the strength of Order 33

Rule 6 CPC without any basis. Order dated 13.05.2015 was passed at the initial stage of the suit and the said order was never adverted to by the petitioners while filing the objections and despite the knowledge of the report of the Collector, the said report was never assailed in any Forum. The only submission with regard to issuance of notice in terms of Order 33 Rule 6 CPC cannot be appreciated, particularly in the light of vague objections filed by the petitioners before the trial Court. Litigation is between the husband and wife. The issue of payment of Court fee is exclusively between the plaintiff and the Court. Defendants in the suit have nothing much to object.

[17]. For the reasons recorded hereinabove, this revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

October 03, 2018

*Prince***(RAJ MOHAN SINGH)
JUDGE****Whether reasoned/speaking
Whether reportable****Yes/No
Yes/No**