

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 290

CR-3793-2018 (O&M)

Date of decision : 14.03.2019

Attar Singh (since deceased)
through his legal representatives

..... Petitioners

VERSUS

Karambir

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. R. S. Mamli, Advocate, for the petitioners.

Mr. Vikram Singh, Advocate, and
Mr. Abhinav Sood, Advocate, for the respondent.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 11.05.2018, passed by the Additional District Judge, Sonapat (for short, the Appellate Court), dismissing the appeal filed by Attar Singh for want of deposit of requisite Court fee.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the respondent filed a suit seeking therein possession by way of specific performance of an agreement to sell dated 01.09.2010. Consequential relief of permanent injunction was also sought. On being put to notice, Attar Singh (now represented by his legal representatives), who was the defendant in the suit, appeared before the Trial Court and filed his written statement refuting the respondent's claim. After framing the issues, the Trial Court, after sifting the evidence led by both parties, through judgment and decree dated 26.04.2014 decreed the respondent's suit. Against the aforesaid judgment and decree the petitioner filed an appeal before the Appellate Court. Alongwith the appeal he filed an application seeking exemption from payment of the applicable Court fee after being declared an indigent person. Such application was dismissed by

the Appellate Court against which the petitioner approached this Court through CR-1667-2018 "*Attar Singh vs Karambir*" which was dismissed as withdrawn on 14.03.2018. Since thereafter also the petitioner did not deposit the requisite Court fee, his appeal was dismissed, occasioning the filing of the present petition.

Learned counsel for the petitioners submits that the requisite Court fee was over ₹2 lakhs and since Attar Singh, the predecessor-in-interest of the petitioners, was about 80 years old and was having no source of income, he could not deposit the same in time. He submits that the petitioners have now arranged the money and if so permitted they can deposit the requisite Court fee within fifteen days. It is further submitted that for the delay in deposit of Court fee ₹50,000/- as costs have already been deposited by the petitioners in the Legal Aid Fund before the Trial Court in terms of the order of this Court dated 31.05.2018 through which notice was issued in the present petition.

Learned counsel for the respondent submits that Attar Singh was granted several opportunities to deposit the Court fee but when he failed to do so, the Appellate Court had rightly dismissed his appeal. It is further submitted that Attar Singh has not come to the Court with clean hands as in the present petition he had not disclosed the order of this Court dated 14.03.2018, passed in CR-1667-2018 "*Attar Singh vs Karambir*" as also the fact that in execution of the Trial Court's decree the respondent had already taken possession of the suit property.

The respondent's suit was for seeking possession by way of specific performance of an agreement to sell dated 01.09.2010 which was decreed by the Trial Court on 26.04.2014. Within the prescribed period of

limitation, Attar Singh, the predecessor-in-interest of the petitioners, had filed his appeal. Alongwith the appeal, he had filed an application seeking exemption from payment of the applicable Court fee after being declared as an indigent person. The application was dismissed by the Appellate Court and the revision petition filed by him before this Court was withdrawn on 14.03.2018. After filing the present petition Attar Singh died at the age of over 80 years. Now, the present petition is being pursued by his legal representatives and they have submitted before this Court that they be permitted to file the requisite Court fee within two weeks. They further submit that they have already deposited costs of ₹50,000/- before the Legal Aid Fund as directed by this Court through order dated 31.05.2018.

All that the petitioners seek is the adjudication of their appeal on merits after deposit of the applicable Court fee which they undertake to deposit within two weeks. For the delay in the deposit thereof they have already deposited costs of ₹50,000/- before the Legal Aid Fund.

In the light of the above facts, the afore prayer made by learned counsel for the petitioners is accepted and resultantly, after setting aside the impugned order, the petitioners are granted two weeks' time from the date of receipt of a certified copy of this order to deposit the requisite Court fee. If such deposit is made within the time granted by this Court, their appeal shall be adjudicated upon on its merits.

The present petition is allowed in the above terms.

14.03.2019
shamsher

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No

[DEEPAK SIBAL]
JUDGE