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

1. CM No.192-CII of 2019 in/and
Civil Revision No.969 of 2018
Date of Decision: 04.02.2019

Harbans Singh GillPetitioner
Vs
Gurjant SinghRespondent

2. CM No.583-CII of 2019 in/and
Civil Revision No.970 of 2018

Harbans Singh GillPetitioner
Vs
Gurjant Singh & othersRespondents

3. CM No.193-CII of 2019 in/and
Civil Revision No.971 of 2018

Harbans Singh GillPetitioner
Vs
Gurjant Singh & othersRespondents

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

Present:Mr. R.K. Singla, Advocate
for the petitioner.

Mr. R.S. Athwal, Advocate
for the respondent(s).

RAJ MOHAN SINGH, J.

[1]. Vide this common order CR Nos.969, 970 and 971 of 2018 are being decided. Since common questions of law and fact are involved, therefore, for brevity facts are being culled out from CR No.969 of 2018.

[2]. After issuance of notice of motion on 14.02.2018, the case was adjourned in due course for 18.03.2019. Vide order dated 14.01.2019 passed in CM No.192-CII of 2019, notice was issued for final disposal of the case for 22.01.2019. Thereafter the case was adjourned for today on the joint request of the parties on 31.01.2019. With the concurrence of learned counsel for the parties, I proceeded to decide the controversy on merits.

[3]. This revision petition has been preferred against the order dated 14.11.2017 passed by the Addl. District Judge, Fatehabad, vide which the application filed by the respondent-Gurjant Singh for permission to file appeal as indigent person was allowed.

[4]. Perusal of the application filed by the respondent would show that the application was filed with the following grounds:-

- "1. That the above mentioned appeal has been filed by the appellant/plaintiff before this Hon'ble Court, which is most likely to be accepted on the grounds mentioned in memorandum of appeal, which may kindly be treated as part of this application.*
- 2. That the appellants/defendants could not make arrangement of Court fees, the appellants are indigent persons, have no source of income at present, are trying their best to make arrangement, has no property other than land in dispute, has to file the present appeal today to avoid delay. The appellants have to seek for exemption to affix Court fees on memorandum of appeal for the reasons not in their control.*

[5]. The endorsement made at the end of the application is suggestive of the fact that the same was presented by Sh. P.K. Jindal, Advocate on 04.03.2015. The suit filed by the plaintiff/petitioner for possession by way of specific performance of agreement to sell dated 03.10.2008 was decreed by the trial Court vide judgment and decree dated 02.02.2015. The appeal was preferred by the respondent along with application for permission to file the appeal without affixing the court fee as indigent person.

[6]. The application was contested by the plaintiff on the ground that the respondent and his uncle Bhan Singh had entered into three agreements to sell on 03.10.2008 with the plaintiff/petitioner and had received a sum of Rs.32 lakhs. The person having moveable and immovable property of less than Rs.1000/- can only file the application as indigent person, whereas defendant and his uncle Bhan Singh had already received a huge amount of Rs.32 lakhs and the said fact was admitted by the defendant and his uncle Bhan Singh in the written statement as well as in the suit proceedings. Defendant had also received an amount of Rs.4 lakhs as earnest money in the present case. During pendency of the civil suit, the defendant had entered into another agreement to sell dated 10.06.2014 in respect of 8 *Kanals* of land with Chitvan son of

Ashok Kumar and had received a sum of of Rs.4 lakhs from him. With this background, the application was opposed.

[7]. The lower Appellate Court asked for report from the Collector, Fatehabad, who had reported that defendant and Bhan Singh have landed properties. Defendant is owner of 40 Kanals of land situated in village Nathuwala and 12 Kanals 6 Marlas of land in village Chillewal total measuring 52 Kanals 6 Marlas of land. However, he has no movable property. Bhan Singh is owner of 36 Kanals 11 Marlas of land in village Nathuwala i.e. 731/1600 share out of land measuring 80 Kanals. Bhan Singh had availed loan from OBC Tohana in a sum of Rs.2.50 lakhs and has no movable property in his name. He has also no land in village Chillewal. The land subject matter of agreements are in possession of the defendants. The lower Appellate Court has allowed the application on the basis of report of the District Collector on the premise that the amount of Rs.32 lakhs was received by the defendant in the year 2008 and no evidence is available on record to show that the said amount is still with the appellant.

[8]. Learned counsel for the petitioner vehemently submitted that the provision in terms of Order 33 Rules 1 & 2 CPC, Order 44 CPC are to be read in conjunction with each other. No specific provision was cited for permission to file

appeal as indigent person. Even if the provision of Order 33 Rules 1, 2, 3, 5 and 6 CPC are to be considered, the application is found to be wanting in terms of compliance of Order 33 Rules 2, 3 and 6 CPC. At the same time as per Rule 5(c) CPC of the said Rules, the requirement is that the Court shall reject the application for permission to sue as an indigent person, where he has within two months passed before presentation of the application disposed of any property fraudulently or in order to be able to apply for permission to sue as an indigent person. The object of the provision is to enable a person, who is bed ridden by poverty or not possessed of sufficient means, not to pay court fee. The provision exempts such person from paying requisite court fee for prosecuting the appeal in *forma pauperis*.

[9]. Learned counsel by relying upon **M.L. Sethi vs. R.P. Kapur, 1972 AIR (SC) 2379; Sanyukta wife of Prem Kumar Madan vs. Prem Kumar Madan, Etc., 1974 PLR 5; Mathai M. Paikeday vs. C.K. Antony, 2011(3) R.C.R. (Civil) 869** contended that under Order 33 Rules 2 and 9 CPC an inquiry has to be conducted as the matter is not exclusively between the applicant and the State. Petitioner has all the right to show that the defendant was not a pauper and the lower Appellate Court is bound to comply with the mandatory requirement of provision of Order 33 and its sub-rules. Defendant cannot be

considered to be as pauper as he has means to pay court fee even as per report of the Collector and after having received an amount of Rs.32 lakhs in three agreements. It was obligatory on the part of the defendant to prove that the amount received in three agreements was spent by him with the passage of time. No such evidence was led. The expressions 'sufficient' means under Order 33 Rule 1 CPC contemplates the ability/capacity of a person in ordinary course to raise by all available means to pay the court fee. For that different factors are to be appreciated by the Court. The report of the Collector in entirety did not advance the case of the defendant in any manner to arrive at a conclusion that the defendant was having no sufficient means to pay the court fee.

[10]. On the other hand, learned counsel for the respondent relied upon **R.V. Dev @ R. Vasudevan Nair vs. Chief Secretary, Govt. of Kerala & Ors., 2007(3) R.C.R. (Civil) 237,** wherein in para No.8 following observations were made:-

“8. Order 33 of the Code of Civil Procedure deals with suits by indigent persons whereas Order 46 thereof deals with appeals by indigent persons. When an application is filed by a person said to be indigent, certain factors for considering as to whether he is so within the meaning of the said provision is required to be taken into consideration therefor. A person who is permitted to sue as an indigent person is liable to pay the court fee which would have been paid by him if he was not permitted to sue in that capacity, if he fails in the suit of the trial or even

without trial. Payment of court fee as the scheme suggests is merely deferred. It is not altogether wiped off. Order 33 Rule 10 of the Civil Procedure Code provides for the consequences in regard to the calculation of the amount of court fees as a first charge on the subject matter of the suit.”

[11]. On the aforesaid analogy, learned counsel submitted that a charge may be created on the basis of aforesaid ratio of the judgment.

[12]. I have considered the submissions made by learned counsel for the parties.

[13]. In the application filed by the defendant, requirement of Order 33 Rules 2, 3 and 6 CPC have not been pleaded. The application was not presented by the defendant in person along with his counsel. The impugned order is not suggestive of the fact that whether provisions made under Order 33 CPC and its sub-rules would apply or the application ought to have been filed under Order 44 CPC.

[14]. Filing of application does not suggest provision under which the same was filed. The lower Appellate Court has decided the application solely on the ground that the amount of Rs.32 lakhs with the passage of time could not be explained as whether the same was utilized or not? Since the possession of the land remained with the defendant, therefore, in my considered opinion the impugned order dated 14.11.2017 passed by the Addl. District Judge, Fatehabad does not

correspond to the requirement of law and thus the same is set aside.

[15]. Since no such differentia has been done by the lower Appellate Court, therefore, I deem it appropriate to direct the lower Appellate Court to revisit the issue in question and pass appropriate order in accordance with law by appreciating whether provisions under Order 33 CPC and its sub-rules would apply to the present case or the application has to be decided under Order 44 CPC. The trial Court shall also deliberate upon whether requirements of Order 33 Rules 2, 3 and 6 CPC can be done away with in the instant case.

[16]. With the aforesaid direction, all the three revision petitions are disposed of.

February 04, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No