

Date of Decision: 25.07.2019

....Petitioners

.....Respondent

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Present: Mr. Sandeep Jasuja, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CR No.4410 of 2019 titled Raman Punchhi and another Vs. Vikas Baid and CR No.4420 of 2019 titled Raman Punchhi and another Vs. Vikas Baid are being decided. Facts are being taken from CR No.4410 of 2019.

[2]. Petitioners have preferred these revision petitions

against the order dated 27.05.2019 passed by Additional District Judge, Fazilka vide which application filed by the petitioners for permission to sue as indigent person was dismissed.

[3]. Petitioners being judgment debtors filed an appeal before the Additional District Judge, Fazilka against the judgment and decree dated 21.09.2015 passed by the trial Court in a suit for recovery. In the appeal, petitioners filed the aforesaid application for permission to sue/file the appeal as indigent person. Petitioners alleged that they had no sufficient means to pay the Court fee payable in the appeal. They submitted that during pendency of the appeal they have become pauper.

[4]. The application was contested by the plaintiff/respondent by giving details of the properties owned and possessed by the petitioners.

[5]. On the basis of pleadings of the parties, Lower Appellate Court framed an issue with regard to capacity of the petitioners to pay the Court fee. Issue No.1 was to the following effect:-

“1. Whether the applicant has own immovable or movable property in his name or not? OPA”

[6]. Petitioner No.1 is Raman Punchhi and petitioner No.2 is the business concern which has been impleaded through

petitioner No.1, therefore, petitioner No.1 claimed himself to be pauper and precisely, for that reason, the aforesaid issue was framed.

[7]. Petitioner No.1 got himself examined as AW 1, Rajesh Kamboj as AW 2 and his father Mehar Chand Punchhi as AW 3.

[8]. Lower Appellate Court dismissed the application after noticing some incriminating facts.

[9]. I have heard learned counsel for the petitioners at some length.

[10]. Vide order dated 18.07.2019, learned counsel for the petitioners was directed to file an affidavit of petitioner No.1 in respect of properties disclosed by the respondent in reply to the application which formed part of observation of the Court in para No.4 of the impugned order. Petitioner No.1 was required to disclose whether those properties were never owned by him and his wife at the time of filing of the suit.

[11]. In compliance of the aforesaid, petitioner No.1 has filed his affidavit giving his own version in respect of properties. The ownership qua the properties has not been denied specifically, but petitioner No.1 intended to project a case that business of petitioner No.1 has gone bad to worst and business has been closed down. He further pleaded that there is no income showing in the bank accounts as well as in current accounts

from other businesses. The factum of ownership has not been denied.

[12]. It is true that sufficient means does not correlate with sufficient property. Sufficient means would not be sufficient property, but it includes such means on which the bare living of the person depends. The capacity to raise funds by normal means has to be seen. The capacity being a question of fact has to be ascertained on the basis of evidence to be led by the parties.

[13]. Precisely, in the aforesaid context, issue was framed and both the parties were required to lead their evidence. Father of petitioner No.1 has disclosed in his statement as AW 3 that he has transferred an amount of Rs.18,05,300/- to Gaur Diagno firm of petitioner No.1. He also stated that he had transferred an amount of Rs.9,52,200/- to Gaur Diagno. Petitioner No.1 is having car. Petitioner No.1 has admitted in his cross-examination that he has Tata Indigo car and he further stated that he is in possession of Maruti Swift Dzire. Petitioner No.1 is an income tax assessee, but he pleaded ignorance about his pan number, besides having equipments of domestic needs like electric connection, gas connection, mobile phone, three air conditioners, landline phone. Petitioner No.1 is in possession of stock of the company, but he did not disclose the value of the

stock. He is having saving account in State Bank of India, but pleaded ignorance about the account number. Respondent has examined Sandeep Kukkar, Deputy Manager, State Bank of India as RW 5. Petitioner No.1 is a proprietor of Gaur Diagno and obtained loan of Rs.40,00,000/- from the bank. The loan account stands closed by making payment of outstanding loan amount in the month of October, 2016. He is also authorized signatory as Manager of current account in PNB in the name of Sri Gaurang Print and Pack of which his wife is proprietor. Petitioner No.1 pleaded ignorance about number of firms in operation from his residential house No.915, Arya Samaj Road, Fazilka. He is taking rent from those firms. Petitioner No.1 also pleaded ignorance about any rent being received or there was rent note in favour of Sri Gaur Narain Sewa Ashram. He also pleaded ignorance about execution of any rent note for obtaining drug licence. Petitioner No.1 had given property to his wife on rent vide rent note Ex.R113, but did not disclose this fact in his examination-in-chief. Wife and sons of petitioner No.1 are running the firm Sri Gaurang Print and Pack from the residence of petitioner No.1 of which petitioner No.1 is authorized signatory. Petitioner No.1 has also admitted in his cross-examination that Zylac Pharmaceuticals firm is also operating from his home address i.e. house No.915, Arya Samaj Road,

Fazilka. He is also authorized signatory of said firm. Son of petitioner No.1 is studying in Cambridge University and status of the same is shown in his facebook account.

[14]. On the basis of aforesaid incriminating facts, Lower Appellate Court came to the conclusion that petitioner No.1 has not disclosed true picture of his financial capacity to pay the requisite Court fee.

[15]. The aforesaid instances would give rise to a conclusion that petitioner No.1 is trying to conceal the material information from the Court. He has means to pay the requisite Court fee. Several instances of business prospects, owning vehicles/cars, having pan number, implements of domestic needs including three air conditioners, availability of stock of company of undisclosed value, several bank accounts in SBI as well as in PNB, obtaining loan of Rs.40,00,000/- from SBI, clearance of the same in October, 2016, authorized signatory in the capacity of manager in Sri Gaurang Print and Pack of which his wife is the proprietor, running of different companies from his house bearing No.915, Arya Samaj Road, Fazilka, study of his son in Cambridge University, deposit of an amount of Rs.18,05,300/- by father of petitioner No.1 in the account of Gaur Diagno firm of petitioner No.1 and deposit of Rs.9,52,200/- in the same firm would give rise to irresistible conclusion that petitioner No.1 is a

man of means and is trying to conceal the material information from the Court which would dis-entitle him from claiming any relief under Order 33 Rule 1/Order 44 Rule 1 CPC.

[16]. Resultantly, finding no merit in these revision petitions, the same are accordingly dismissed.

25.07.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No