

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

228

FAO No.2001 of 2016 (O&M)
Date of decision: 22.01.2019

RAJ KUMAR CHANNI THR HIS LRS

... Appellant

Versus

PUNJAB STATE POWER CORP LTD & ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rakesh Chopra, Advocate for the appellant.
Mr. B.S. Mittal, Advocate for the respondents.

REKHA MITTAL, J. (Oral)

CM No.7693-CII of 2016

Heard.

In view of averments made in the application supported by an affidavit of Vikrant Channi son of Raj Kumar Channi and arguments advanced by counsel for the applicants/appellants coupled with the fact that application for review of order dated 20.11.2012 filed on 20.12.2012 remained pending and was disposed of on 10.11.2015, the application is allowed and delay of 1136 days in filing the appeal stands condoned.

Main Case

The present appeal directs challenge against orders dated 20.11.2012 and 10.11.2015 passed by the Additional District Judge, Fatehgarh Sahib whereby application filed by Raj Kumar to permit him to pursue the appeal titled 'Raj Kumar Vs. Punjab State Power Corporation Ltd. etc.' as an indigent person was dismissed vide order dated 20.11.2012 and review application was dismissed on 10.11.2015.

Counsel for the appellant would argue that the Court sought a report from the Collector with regard to assets/properties owned by Raj Kumar and reports dated 15.10.2012 Annexure P1 and dated 19.10.2012 Annexure P2 were sent to the Court by Tehsildar, Amloh and Deputy Commissioner, Fatehgarh Sahib whereby it was reported to the Court that Raj Kumar son of Gurdas Ram is owner of 223/1040 share of khasra No.943/317 measuring 2 kanal 12 marlas as per jamabandi for the years 2007-08. It is further argued that in the jamabandi Annexure P3, said area

measuring 2 kanal 12 marlas is shown to be gair mumkin house and passage. It is argued with vehemence that in view of the provisions of Section 60(1)(ccc) of the Code of Civil Procedure, only residential house is exempted from attachment and the same cannot be taken into consideration while deciding plea of a litigant seeking permission to file a suit or appeal as an indigent person. It is further argued that since Raj Kumar has passed away and his LRs have been brought on record, Karan Rishoo Raj son of Late Raj Kumar filed affidavit dated 07.11.2017 wherein he has made it clear that out of total land owned by M/s Channy Enterprises, only 10 marlas of land is in possession of deponent in which there is a residential house. It is further argued that contesting respondents have not filed any counter to the affidavit of Karan Rishoo Raj nor there is material on record that except share of Raj Kumar in area measuring 2 kanal 2 marlas, he is owner of any other immovable property.

Counsel representing the respondents has supported the impugned orders with the submission that the Appellate Court has rightly directed payment of Court fee while dismissing the application for permission to file the appeal as an indigent person. However, he would fairly inform that the respondents also rely upon the report of Deputy Commissioner and copy of jamabandi Annexure P3 to support the orders impugned.

I have heard counsel for the parties, perused the paper book particularly the orders impugned and documents Annexures P1 to P3.

Perusal of the report of Deputy Commissioner, Fatehgarh Sahib makes it evident that Raj Kumar son of Gurdas Ram is recorded as owner of 223/1040 share of khasra No.943/317 measuring 2 kanal 12 marlas. As has rightly been pointed out by counsel for the appellants, the said area is recorded to be gair mumkin house and passage. The share of Raj Kumar to the extent of 223/1040 out of land measuring 2 kanal 12 marlas would be approximately 10 marlas. There is no counter to the affidavit of Karan Rishoo Raj son of Raj Kumar that the 10 marlas area is under occupation of a house. Counsel for the respondents has not disputed that the only residential house cannot be taken into account for judging capacity of a litigant to pay Court fee. In the given circumstances, the appellant has been

able to establish that he is not in possession of sufficient means to pay the requisite court fee on appeal preferred by him against the decree and judgment dated 22.10.2011 passed in favour of the respondents/plaintiffs. That being so, the orders impugned cannot be allowed to sustain and accordingly set aside.

In view of what has been discussed hereinabove, the appeal is allowed. The appellant is permitted to pursue the appeal without payment of Court fee being an indigent person.

22.01.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No