

CR-2777-2017(O&M) 1

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

**CR-2777-2017(O&M)
Date of decision: 04.03.2020**

Gian Kaur**Petitioner**

Versus

Jasvir Kaur Bains and others
.....**Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.R.S.Bajaj, Advocate for the petitioner

Mr. Nippun Sharma, Advocate for

Mr. P.K.Sareen, Advocate for respondents no.1 to 3

ANIL KSHETARPAL, J. (ORAL)

For a small issue parties have filed the present revision petition under Article 227 of the Constitution of India. Plaintiffs-respondents filed a suit for recovery of Rs. 29,21,626/- alongwith prayer for grant of decree of permanent injunction. Alongwith the said suit, an application for permission to sue as indigent persons as required under Order 33 Rule 1 CPC was also filed. Since defendant contested the aforesaid fact, therefore, the Court proceeded to frame issue which reads as under:-

“1. Whether the applicant is possessed of
sufficient means to file Court fee? OPR1”

Present petition has been filed by the defendant.

Learned counsel for the petitioner submits that once it is the case of the plaintiffs that they are indigent persons then they are required to prove that fact. The onus to prove the aforesaid issue has to be on the plaintiffs and not on the defendant. He further submitted that learned

Court has erred in placing negative onus on the defendant.

On the other hand, learned counsel for the respondents has submitted that pursuant to the application filed by the plaintiffs, report of the District Collector was sought and it was reported that the plaintiffs do not have sufficient means to pay ad valorem court fee. He, hence, submits that it is the defendant who is alleging that plaintiffs are possessed of sufficient means and therefore, onus has rightly been placed by the learned Trial Court.

It is well settled that in a civil suit or proceedings, the onus shifts once primary onus is discharged by one party. Still further, the primary onus is on the party who asserts a particular fact. It is the plaintiffs who had come to the Court alleging that they do not have sufficient means to deposit the ad valorem court fee. Therefore, the primary onus has to be placed on the plaintiffs. Once the plaintiffs discharges the primary onus then it would shift on the defendant to prove their assertion.

Keeping in view the aforesaid facts, the issue framed by the Court is amended and it be read as “*whether the plaintiffs-claimants are entitled to sue as indigent persons on account of the fact that they are not possessed of sufficient means?OPP*”

Petition stands disposed of.

04.03.2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No