

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

201

**CR No.3166 of 2018 (O&M)
Decided on : 22.09.2021**

Smt.Shakuntla

... Petitioner

Versus

Surinder Kumar and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.Deepak Sharma, Advocate, for the petitioner.

Mr.N.S.Kohli, Advocate, for respondent No.1.

G.S. Sandhawalia, J. (Oral)

Challenge in the present revision petition, filed under Article 227 of the Constitution of India, is to the order dated 04.04.2018 (Annexure P-6) passed by the District Judge, Ambala, whereby the application to file the appeal as an indigent person was dismissed and the applicant-petitioner was directed to deposit the requisite Court fees on or before the next date of hearing.

The reasoning which prevailed with the District Judge was that a report had been received from the Collector that the applicant-petitioner does not own any land. However, the house in Sultanpur is newly constructed. The report also stated that the financial position of Shakuntla Devi is sound. The applicant had also been questioned by the said Court and had given the statement that the value of the utensils and the clothes was Rs.2000/- and by noticing that the house where she was residing cannot be taken into consideration since her share would be exempt from attachment, the application was dismissed by noticing that only she had filed the appeal and not her sons and daughter. Thus, keeping in view the statement that the value of clothes and utensils was around Rs.2000/-, the application was dismissed by holding that the various judgments cited were not applicable.

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Counsel for the petitioner has vehemently submitted that inspite of the report of the Collector which showed that she had got no other land except the house, the order of the District Judge was not justified. It is submitted that the provisions of Order 33 CPC, thus, have not been appreciated in their correct perspective and the District Judge has failed to exercise jurisdiction vested in it by law.

Counsel for respondent No.1, on the other hand, has submitted that the order was reasoned and do not require any interference since the house had already been constructed where she was residing with her children.

A perusal of the report of the Tehsildar dated 28.02.2018 (Annexure P-4) would also go on to show that the house was constructed in the abadi of Sultanpur. In the statement of the petitioner dated 04.04.2018, it was alleged that the plot area was 150 sq.yards and the petitioner's two sons were living in 2 rooms and she lives in the third room. The house is stated to be in the name of her late husband. It is not disputed that the petitioner is also around 60 years old. Counsel for the petitioner has referred to the amount of Old Age Pension that she is getting @ Rs.2000/- per month in the year 2019. Order 33 Rule 1 CPC provides that a person who is not possessed of sufficient means can be considered as a indigent person and admittedly, the house where she was staying would be exempt from attachment, which was also noticed by the District Judge. Similar provision is provided for the purpose of filing an appeal under Order 44 CPC. The same reads as under:

“ORDER XLIV

[Appeals by Indigent Persons]

1. Who may appeal [as an indigent person].-[(1)] Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as an [indigent person], subject, in all matters, including the presentation of such application, to the provisions relating to suits by [indigent persons], in so far as those provisions are applicable.”

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The appeal arises out of a suit regarding specific performance of agreement dated 25.09.2006 executed by her husband and the suit was defended by the petitioner along with her sons and recovery of Rs.1,60,000/- had been ordered along with interest on account of the fact that they had inherited the estate. In such circumstances, keeping in view the fact that the petitioner is a senior citizen and in possession of only one room in the family house, a liberal approach has to be taken, keeping in view the provisions of Order 33 Rule 1 CPC. The report of the Tehsildar would also go on to show that she does not possess any other immoveable property and therefore, merely because a report has come that the house was newly constructed, it would not imply that the petitioner had sufficient means, as such. She is drawing Old Age Pension of Rs.2000/- per month would also go on to show the indigence of the petitioner and thus, requiring social security from the State on account of her weak financial position. The petitioner, thus, does not seem to be of such means whereby she can be held to have the capacity to raise the money to pay the Court fees. If the same is not permitted, her right to file a first appeal against the suit decreed for recovery would be taken away and therefore, the observations of the Apex Court in **A.A.Haja Muniuddin Vs. Indian Railways (1992) 4 SCC 736** would come into play that access to justice cannot be denied to an individual merely because he does not have the means to pay the prescribed fee.

Accordingly, keeping in view the above background, this Court is of the opinion that the order of the Lower Appellate Court dated 04.04.2018 (Annexure P-6) suffers from material irregularity and illegality. The Court had failed to exercise its jurisdiction vested in law and the same is, accordingly, set aside and the application filed under Order 33 CPC is allowed. It is directed that the Lower Appellate Court, Ambala shall hear the appeal on merits.

Present revision petition stands allowed, in the above-stated terms.

September 22, 2021

Sailesh

**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No