

Sr. No. 202

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

CR No.7176-2019

Date of decision: 21.12.2021

Nirmala and others

...Petitioners

Vs.

Harpal

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. R. S. Budhwar, Advocate,
for the petitioners.

Mr. K. S. Dhanora, Advocate,
for the respondent.

ARUN MONGA, J. (ORAL)
CM-13130-CII-2021

This is an application for preponing the main case, which is pending for 21.12.2021.

Since the main case which is already listed today i.e.21.12.2021, learned counsel for the applicant/respondent seeks to withdraw the present application.

Dismissed as withdrawn.

Main case

Petition herein *inter alia* is for setting aside the order dated 04.10.2019 passed by Learned Additional District Judge, Kurukshetra (Annexure P-5) vide which application of the petitioners for permission to file the appeal as an indigent person under Order 44 Rule 1 CPC read with Section 151 CPC has been dismissed.

2. Learned counsel for the petitioners submits that First Appellate Court has relied upon report of Collector while presuming yearly income of the family of the petitioner to be Rs.60,000/-. He further submits that reports from Patwari and Tehsildar, Ladwa, District Kurukshetra, evidence that

financial condition of the petitioner is very poor. There is only one residential house of the petitioners in the abadi of the village. As per the revenue record, there is no land in the name of the petitioner. Assessment of annual income to the tune of Rs.60,000/- is not supported by any material on record.

3. On the other hand, learned counsel for the respondent strenuously opposes the prayer made by learned counsel for the petitioners. He submits that as per report of the Collector the family income of the petitioners is Rs.60,000/- and as such they are very much able to affix the ad valorem court fee.

4. I have heard learned counsel for the parties and gone through the case file.

5. Petitioners applied to the learned Appellate Court for permission to appeal as indigent persons against judgment and decree dated 22.05.2019 passed against them by the learned Civil Judge (Senior Division), Kurukshetra for recovery of Rs.5 lakhs with future interest @ 6% per annum from the date of decree till payment. It is pertinent to note that the plaintiff's claim in suit was based on a loan stated to have been taken from him by Hakam Singh, since deceased. Petitioner No. 1 is the widow while petitioner Nos.2 and 3 are daughter and son respectively of Hakam Singh.

6. Petitioners claim that total value of their properties comprising of wearing apparels worth Rs.2000/-, cooking vessels worth Rs.1000/-, beds and beddings worth Rs.1500/-, tools of labour worth Rs.1000/- and some ration items worth Rs.1000/- is only Rs.7000/- besides residential house in village Barot. Tehsildar's report shows that there is no land in the

name of the petitioners, their financial condition is very weak and their yearly family income is about Rs.60,000/-.

7. Vide proviso to section 60 CPC, the petitioners' wearing apparels, cooking vessels tools and residential house are exempt from attachment. These are to be ignored while determining whether or not they are able to pay the court fee for appeal. Report of the Tehsildar does not disclose the source of their income and the basis of its assessment at Rs.60,000/- per annum. In view of this and without any other tangible material before him, it seems that the Learned Additional District Judge was not justified in simply adopting the said figure of petitioners' income. Even otherwise, considering the prevailing cost of living, the total family income of Rs.60,000/- per annum seems less than enough to make both ends meet for the survival of the three petitioners.

8. Considering the facts and circumstances and taking a realistic view of the case, I am of the opinion that the petitioners are unable to pay the fee required for the memorandum of appeal and they ought to be allowed to file the same as indigent persons. To my mind, the learned Additional District Judge erred in taking a contrary view and acted illegally and with material irregularity while dismissing the petitioners' application. Accordingly, the impugned order dated 04.10.2019 (Annexure P-5) is set aside and the petitioners are allowed to appeal as indigent persons as per the provisions of Order 44 Rule 1 CPC.

9. Revision petition stands disposed of accordingly.

21.12.2021
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No