

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

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CR No. 6350 of 2018 (O & M)
Date of decision : 5.9.2022

Rita Sachdeva**.....Petitioner****Vs.****Sukhdeep Singh and others****.....Respondents****CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA****Present:** Mr. Aalok Jagga, Advocate, for the petitioner

Mr. Rajdeep Singh Chugh, Advocate, for respondent No.1

Mr. Aman Sharma, Advocate, for respondent No.2

Mr. D.K. Singla, Advocate, for respondent No.3

TRIBHUVAN DAHIYA, J. (Oral)

1. This revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 28.8.2018 (Annexure P-1) passed by the lower Appellate Court vide which petitioner's application under Order XLIV Rule 1 CPC seeking leave to pursue **Civil Appeal No. 23 of 2017** titled *Rita Sachdeva v. Sukhdeep Singh and others*, as indigent person has been dismissed.

2. The facts in brief are, respondent no.1/plaintiff had filed a civil suit for specific performance of agreement to sell, dated 21.4.2005, directing the defendants to execute sale deed of House No. 639, Phase I, Urban Estate, Dugri Road, Ludhiana, along with permanent injunction restraining the defendants from dealing with the property. The suit was decreed by the trial Court on 20.1.2017 (Annexure P-2) holding the plaintiff entitled to the relief of specific performance of agreement to sell dated 21.4.2005. Meanwhile, defendant no.2, who was petitioner's husband, died unfortunately. It has been stated that the reason for entering into the agreement to sell was only to

meet the medical expenses being incurred on defendant no.2 before his death. The petitioner, as wife of defendant no.2, later on decided to challenge the judgment and decree of the trial Court dated 20.1.2017, and filed Civil Appeal No. 23 of 2017 (Annexure P-3) before the lower Appellate Court. Since the petitioner statedly did not have any means to pay the Court fees, she filed an application under Order XLIV Rule 1 CPC seeking leave to pursue the appeal as an indigent person. The said application was dismissed by the lower Appellate Court vide order dated 4.9.2018.

3. While dismissing the appeal, lower Appellate Court has held that as per admitted facts on record, the petitioner had received earnest money of Rs.15 lakhs from the respondent. Though the amount is stated to have been spent on her husband's treatment, but the details like, name of the hospital, the period her husband remained admitted, etc., have not been provided. It was further held that before the trial Court, the petitioner did not file the case as an indigent person, but she put appearance through counsel and changed counsel as well. This shows she was a person with means, and could not be believed to be indigent.

4. It has been argued by learned counsel for the petitioner that the impugned order passed by the lower Appellate court declining the petitioners' application is in violation of provisions of order XLIV Rule 1 and 3 (2) CPC. He has further placed reliance on the judgment of the Supreme Court in *Sushil Thomas Abraham v. M/s Skyline Buildings thr. its partners and others*; 2019 (3) SCC 415. *Per contra*, it has been contended by learned counsel for the respondents, that there is no violation of law in the impugned order. All the surrounding circumstances have been

taken into account to conclude that the petitioner is not indigent, which is sufficient compliance of Order XLIV Rule 1 and 3 (2) CPC.

5. Provisions of Order XLIV Rule 3 (2) CPC prescribe the procedure required to be followed to decide the question as to when an applicant, who filed the appeal from a decree, can be declared an indigent person. It mandates the Court to hold an enquiry into the question as to whether the applicant has, in fact, become indigent or not since the date of decree appealed from. Such an enquiry can be ordered to be held by the trial Court also. This has been so held by the Supreme Court in **Sushil Thomas Abraham case** (*supra*). Paras No.24 to 27 of the judgment read as under,

24. Order 44 of the Code applies to appeals. By virtue of Order 44, Rule 1 of the Code, the provisions of Order 33 are made applicable to such appeals.

25. Order 44, Rule 3 (1) of the Code prescribes the procedure in relation to the inquiry which is required to be held to decide the question as to whether the applicant, who has filed the application/appeal under Order 44, can be declared as an indigent person or not. The Rule says that where the applicant is already allowed by the Trial Court to sue as an indigent person then in such circumstances, no further inquiry in respect of the question as to whether he is an indigent person or not is necessary provided such person files an affidavit stating therein that he has not ceased to be an indigent person since the date of decree appealed from.

26. However, if the government lawyer disputes the statement of the applicant made in the affidavit, then the inquiry into the question as to whether he is an indigent person or not shall be held by the Appellate Court or Officer of the Court.

27. Order 44, Rule 3 (2) of the Code provides that where the applicant referred to in Order 33, Rule 11 is alleged to have become indigent person since the date of the decree appealed from then the Appellate Court shall hold an inquiry into the question as to whether the applicant has become an indigent person or not since the date of decree appealed from. The Appellate Court in its discretion can also

direct the Trial Court which passed the decree appealed from to hold an inquiry on such question.

6. In view of the law laid down by the Supreme Court in **Sushil Thomas Abraham case** (*supra*), the impugned order passed by the lower Appellate Court is unsustainable. A perusal of the order makes it apparent that the mandatory provisions of Order XLIV Rule 1 and 3 (2) CPC have not been complied with before deciding the petitioner's application seeking leave to file appeal as an indigent person. The enquiry, as mandated under Order XLIV Rule 3 (2) CPC, was not held by the Appellate Court, nor any such enquiry was directed to be held by the trial Court. The lower Appellate Court has formed opinion on its own by referring to few facts pleaded in the application, which cannot be termed equivalent to holding an enquiry in terms of provisions of Order XLIV Rule 3 (2) CPC. In the enquiry the applicant/petitioner is to prove with evidence that she is an indigent person not able to pay the requisite court fee.

7. For the reasons afore stated, the order passed by the lower Appellate Court dated 9.4.2018 is set aside. The revision petition is allowed. Case is remanded to the lower Appellate Court with a direction to decide the application filed by the petitioner under Order XLIV Rule 1 CPC afresh, in accordance with law and the procedure laid down.

8. Disposed of.

9. All the pending miscellaneous applications, if any, stand disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

5.9.2022

Ashwani

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No