

118 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1156-2022
Decided on : 31.03.2022

Kanta Devi

..... Petitioner

Versus

Mahender and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Ms. Monika Thakur, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

Instant petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 05.09.2016 (Annexure P-2) passed by Addl. Civil Judge (Sr. Divn.) Rewari vide which application filed by the petitioner for granting her permission to contest the suit as indigent person was dismissed with further prayer for setting aside the order dated 30.09.2016 (Annexure P-3) vide which the plaint of the petitioner for mandatory and permanent injunction with all consequential relief was rejected under Order 7 Rule 11(b) CPC and the judgment dated 30.09.2021 (Annexure P-4) passed by Addl. District Judge, Rewari whereby the appeal filed by the petitioner too was dismissed.

The petitioner claims herself to be the owner in possession of a residential plot No.5116 situated in Mohalla Khaspura Rewari where she along with her family has been residing. The house of respondent No.1 is opposite to the house of the petitioner. As respondent No.1 has installed a submersible pump without proper outlet/drainage for discharge of water, it

has been causing a lot of inconvenience and hardship to the petitioner resulting in seepage in the foundation of her house, as a result of which not only her house has been damaged but it has become unfit for human habitation. It is on account of the aforesaid, the petitioner filed a suit for mandatory and permanent injunction with all consequential relief against respondent No.1.

Learned counsel for the petitioner *inter alia* contends that since the petitioner is a person of very limited means, she had moved the Court below to declare her as an indigent person. However, the Court below without appreciating and considering her pecuniary status, passed the impugned order and directed her to pay Court fees in the sum of Rs.6 lakhs alongwith interest @ 18% p.a. Learned counsel has also submitted that the report of the Collector, Rewari with regard to her moveable and immoveable property, was not within the knowledge of the petitioner and it was much later that she learnt about the same otherwise she would have definitely filed her objections to the same. It has also been submitted that the Court below failed to appreciate that the petitioner was a BPL Cardholder, which further supported her case for being declared as an indigent person.

Heard learned counsel and perused the impugned orders passed by the Court below.

The challenge made in the instant petition is to the order under Order 7 Rule 11(b) CPC with respect to the valuation of the Court fees. This Court on a perusal of the material on record including the impugned order does not find any merit in the submissions made. The petitioner has failed to support her application with the schedule of her moveable

property, which is a mandatory requirement while moving an application under Order 33 Rule 2(b) CPC. Still further, as per the report of the Collector, Rewari, the petitioner is the owner of one motorcycle, one TBV, one fridge, LCD, Cooler, one AC and one laptop. Besides this, her house consists of three rooms, one kitchen and washroom etc. It is also not disputed that the petitioner has two sons, who are well employed, though one of them is residing separately. It has also been not disputed by the petitioner that she is owner in possession of the suit property. No doubt, the suit property shall have to be excluded for the purpose of deciding her indigence under Order 33 Rule 2(b) but at the same time, the Collector's report with respect to her moveable property cannot be ignored, more so, since she had not filed any objections to the same.

As a sequel to the above, the present petition being devoid of merit stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

31.03.2022

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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No