

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

Sr. No.119

**CR-1480-2022 (O&M)
Date of Decision: 14.07.2022**

TEJ KAUR

...Petitioner

VERSUS

ISHWAR SINGH

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr. Ravi Dutt Sharma, Advocate,
for the petitioner.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 25.10.2021 (Annexure P-9), passed by learned Additional District Judge, Kaithal, whereby an application under Order 44 Rule 1 CPC has been dismissed. Besides the same, even the the order dated 15.11.2021 (Annexure P-10), has been passed, thereby rejecting the appeal for want of Court fee, as ordered.

The material facts are that while challenging the judgment and decree dated 05.03.2020 in case bearing Civil Suit No.209 of 2017 titled '*Ishwar Singh Vs. Tej Kaur*', an appeal was filed by Tej Kaur, petitioner/appellant. Along with the appeal, an application was also filed under Order 44 Rule 1 CPC, thereby seeking permission to file the appeal as an indigent person. However, vide impugned order dated 25.10.2021 (Annexure P-9), on the basis of the report having received from the Collector, Kaithal, about the petitioner/appellant Tej Kaur, to be having property measuring 11 kanal 1 marla in her name, it was held that Tej Kaur is not an indigent person, and consequently, the application was dismissed.

Vide the same order, the petitioner/appellant was directed to deposit Court fee, as per Rules, on 15.11.2021. However, on 15.11.2021, the petitioner/appellant failed to deposit the Court fee, in compliance of the order dated 25.10.2021 and the appeal in hand was rejected for want of Court fee.

Feeling aggrieved by the aforesaid order, the petitioner filed the present revision petition, thereby challenging the aforesaid two orders.

At the very outset, it is pertinent to mention that learned Additional District Judge had dismissed the application to file the appeal as an indigent person, solely on account of the petitioner/appellant, having property measuring 11 kanal 1 marla.

As per Order 44 Rule 1 CPC, 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. As such, it was required on the part of the Court concerned, to conclude about the inability of the petitioner to pay the Court fee.

As per Clause 3 of Order 44 CPC, the matter was required to be enquired into, to know about the indigency of the appellant concerned. However, vide the impugned order dated 25.10.2021, solely on account of the petitioner being the owner of 11 kanal 1 marla property, it has been held that she is not an indigent person. What was required on the part of learned Appellate Court was to see, whether the petitioner/appellant is able/unable to pay the Court fee. Regarding the said fact, no enquiry as such, has been conducted.

The purpose, contemplated under Order 44 CPC, is not possession of the property, but sufficient means with capacity to raise money to pay the Court fee. Mere possession of the property is not sufficient. If the property in possession of any person is not sufficient enough to raise the money to pay the requisite Court fee, then he/she should not be deemed to be possessing sufficient means to pay the Court fee. Simplicitor on account of 11 kanal 1 marla property owned by the petitioner/appellant, it cannot be concluded that she was able to pay the Court fee.

This is all the more important to consider, when in the application filed under Order 44 Rule 1 CPC, which is Annexure P-5, it has been categorically stated that the petitioner/appellant is having no means to pay the Court fee. In paragraph No.4 of the application, there is a specific mention made about the property to be owned by the petitioner/appellant.

It is categorically stated that land measuring 6 kanal 17 marla, forms the suit property in the case in hand, whereas, the remaining land is suit property of other Civil Suit No.11 of 2016 and decree for specific performance dated 01.10.2021, has been passed by the Civil Court, in respect of the same. A copy of the judgment passed by the Court against the petitioner/appellant, who was defendant No.4 in the other suit, is Annexure P-6. This judgment and decree is dated 10.01.2020. It is stated in the application itself, that the entire property owned by the petitioner/appellant forms the basis of two different suits, in which the decree has been passed against the petitioner.

However, learned Lower Court has not considered the aforesaid facts and had not specifically reached any conclusion about the ability of the petitioner/appellant to pay the Court fee, despite ownership of this extent of land, as so stated in the report received from Collector. No enquiry, as such, *vis-a-vis* the paying capacity of the petitioner/appellant has been gone into.

Considering the aforesaid fact situation, the impugned order dated 25.10.2021, is hereby set aside and learned Lower Appellate Court is hereby directed to consider the report of the Collector, in view of the recitals of the application, so filed by the petitioner/appellant, thereby seeking permission to file the appeal as an indigent person, and after enquiring into the matter, pass a fresh order *vis-a-vis* the capacity of the petitioner/appellant to pay court fee or not.

Consequently, even the order dated 15.11.2021 (Annexure P-10) is hereby set aside, and the appeal is ordered to be revived at its original number. Petitioner/appellant is hereby directed to make appearance before the concerned Lower Appellate Court on 01.08.2022 for further proceedings.

In view of the aforesaid terms, the instant revision petition is allowed.

(ARCHANA PURI)
JUDGE

14.07.2022
Himanshu

Whether speaking/reasoned

Yes

Whether reportable

Yes/No