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

CR-6770-2019

Date of decision: 09.09.2022

Arvind Atri

.....Petitioner

Versus

Manoj Kumar Khurana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Virender Kumar, Advocate, for the petitioner.

Mr. Ajaivir Singh, Advocate, for respondent No. 1.

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HARKESH MANUJA, J. (ORAL)

In the present revision petition, challenge has been made to the impugned order dated 13.09.2019 (Annexure P/6) passed by the Court of learned Additional District Judge, Karnal, whereby the prayer made on behalf of the petitioner for permission to file a civil appeal against the judgment and decree dated 13.03.2018 (Annexure P/1), as an indigent person, has been dismissed.

The facts leading to the present revision petition are that based on an agreement dated 31.05.2010, respondent No. 1, filed a suit for possession by way of specific performance against the petitioner regarding the suit property i.e. House No. 219, Sector 13, Urban Estate, Karnal. The said suit was decreed in favour of respondent No. 1, vide judgment and decree dated 13.03.2018, passed by the learned trial Court.

Aggrieved against the same, the petitioner filed an appeal before the Court of learned District Judge, Karnal. Along with the appeal, the petitioner also moved an application dated 16.04.2018 (Annexure P/2),

declaring him as *forma pauper* after receiving the report from the office of Deputy Commissioner, Karnal.

Notice of the said application was ordered to be served upon respondent No.1-plaintiff as well as the State i.e., the office of Deputy Commissioner, Karnal. Thereafter, the office of Collector, Karnal, was called upon to submit its report. Resultantly, a report dated 10.09.2019 was submitted to the learned Appellate Court by the office of Tehsildar, Karnal, vide communication dated 11.09.2019 (Annexure P-5) (page-61).

On consideration of the report, the learned first Appellate Court vide its impugned order dated 13.09.2019 dismissed the application filed, at the instance of the petitioner, directing him to affix the Court fee in the appeal. Learned Court below rejected the application primarily on the ground that the petitioner was getting income of Rs. 7,000/- per month as rent from the property in question, thus, liable to deposit Court fee. It is the said order dated 13.09.2019 which has been impugned in the present petition.

It has been argued on behalf of learned counsel for the petitioner that once the report dated 10.09.2019 specifically records that besides the property in question, the petitioner does not own any other moveable or immovable property in *Kasba*, Karnal, the rent derived by him from a portion of the suit property cannot disentitle him for being declared as an indigent person and deprive him of the benefits under Order 33 Rule 1 CPC.

On the other hand, it has been argued on behalf of learned counsel for respondent No. 1-plaintiff that the Court has rightly rejected the prayer made on behalf of the petitioner as he has been deriving rental

income out of a portion of the suit property. He further submits that in his application the petitioner has nowhere made any declaration to the effect that he does not own any moveable property. Besides it, he also submits that in case it is found that the rental income derived by the petitioner cannot be considered as his income, respondent No.1 would pray for grant of an opportunity so as to file his objections to the report dated 10.09.2019. He further submits that the report dated 10.09.2019 was submitted before the learned first Appellate Court on 11.09.2019 and the same was considered by it on 13.09.2019 itself without calling upon respondent No.1 to submit their objections, if any.

I have heard learned counsel for the parties and have gone through the paper book.

Vide impugned order, the petitioner has been denied the benefit of being an indigent person on the ground that he was getting rent @ Rs.7000/- per month from the property in question which is the subject matter of the suit. However, once the suit property could not be taken into account while determining his sufficient means for the purposes of holding the status of petitioner as an indigent person, a meaningful reading of Order 33 Rule 1 CPC makes it apparent that even any benefit such as rent etc., arising out of the said property could also not have been considered in this regard. Thus, the reasoning recorded by the learned first Appellate Court does not appear to be in consonance with Explanation I to Rule 1 of Order 33 CPC, which reads as under:-

“Explanation I.—A person is an indigent person, --

*(a) If he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree **and the***

subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or”

Reference in this regard can be made to the judgment of Hon’ble Supreme Court in **Sushil Thomas Abrahjam Vs. M/s Skyline Build. Thr. Its partner and ors.**, 2019 (1) RCR (Civil) 579, and relevant para 21 of the same is reproduced hereunder:-

“21. While examining this question, the Court cannot take into consideration the two properties. First the property, which is exempted from the attachment in execution of a decree and the second which is subject matter of the suit. In other words, the aforementioned two properties cannot be regarded as “possessed” by the person concerned for determining his financial capacity to pay the requisite court fees on his claim in the suit.”

More than that, I also find justification in the submission made on behalf of learned counsel for respondent No.1 when he submits that he was not put to notice as regards the report dated 10.09.2019 made by Tehsildar, Karnal, which was submitted before the first Appellate Court on 11.09.2019 and the impugned order was passed immediately on 13.09.2019.

The sequence of facts narrated above shows that no sufficient opportunity was granted to respondent No.1 so as to controvert the report dated 11.09.2019 regarding which he was entitled to as part of inquiry required to be conducted by the learned first Appellate Court in exercise of powers under sub-rule 1A of Order 33 CPC, which reads as under:-

“Sub-rule 1A. Inquiry into the means of an indigent person.— Every inquiry into the question whether or not a person is an indigent person shall be made, in the first instance, by the chief ministerial officer

of the Court, unless the Court otherwise directs, and the Court may adopt the report of such officer as its own finding or may itself make an inquiry into the question.”

I derive my aforestated view from the observations made by the Hon’ble Supreme Court in case of **M.L. Sethi Vs. R.P. Kapoor**, AIR 1972 SC 2279. Relevant portion of para 7 of the same is reproduced hereunder:-

“7. We venture to think that the High Court was laboring under a mistake when it said that the enquiry into the question whether the respondent was a pauper was exclusively a matter between him and the State Government and that the appellant was not interested in establishing that the respondent was not a pauper. Order 33, rule 6 provides that if the Court does not reject the application under rule 5, the Court shall fix a day of which at least 10 days' notice shall be given to the opposite party and the Government pleader for receiving such evidence as the applicant may adduce in proof of pauperism and for hearing any evidence in disproof thereof. Under Order 33, rule 9, it is open to the Court on the application of the defendant to dispauper the plaintiff on the grounds, specified therein, one of them being that his means are such that he ought not to continue to sue as a pauper. An immunity from a litigation unless the requisite court fee is paid by the plaintiff is a valuable right for the defendant. And does it not follow as a corollary that the proceedings to establish that the applicant-plaintiff is a pauper, which will take away that immunity, is a proceeding in which the defendant is vitally interested ? To what purpose does Order 33, Rule 6 confer the right on the opposite party to participate in the enquiry into the pauperism and adduce evidence to establish that the applicant is' not a pauper unless the opposite party is interested in the question and entitled to avail himself of all the normal procedure to establish it ? We can think of no reason why if the procedure for discovery is applicable to proceeding under Order 33, the appellant should not be entitled to avail himself of it.”

In view thereof, as the learned first Appellate Court has fallen into an error by considering the rental income being derived by the petitioner from the property which is subject matter of the suit, for the purposes of ascertaining him as an indigent person and further that the respondent No.1 was never granted any opportunity to rebut the report made by Tehsildar Karnal, I hereby set aside the order dated 13.09.2019 passed by Additional District Judge, Karnal with a direction to hold a fresh inquiry as enjoined under Order 33 Rule 1A CPC by following the procedure laid down under Rules 6 to 8 of Order 33 CPC. For the said purpose, the learned first Appellate Court shall be at liberty to call for a fresh report regarding the moveable and immoveable assets of the petitioner, from the office of Collector, Karnal, if need be.

Disposed of in the above said terms.

Pending application(s), if any, shall also stand disposed of

09.09.2022
preeti

(HARKESH MANUJA)
JUDGE

Whether reasoned/speaking? Yes/No
Whether reportable? Yes/No