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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5627-2022 (O&M)
Date of decision : 14.12.2022

VARINDER KUMAR

..... PETITIONER

VS

HOSHIAR SINGH.

..... RESPONDENT

CORAM : HON'BLE MR.JUSTICE ALOK JAIN

Present :- Mr. Vivek Chauhan, Advocate for the petitioner.

ALOK JAIN, J. (Oral)

CM-17256-CII-2022

Application is allowed as prayed for subject to just exceptions.

Annexures P-6 to P-8 are taken on record.

CR-5627-2022

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside of order dated 23.09.2022 (Annexure P-4) passed by the learned District Judge, Fazilka vide which the application for seeking permission to sue as an indigent person filed by the petitioner has been dismissed on the ground that he is owner of land measuring 04 Marlas 04 Sarsai situated at Village Sultanpura, Fazilka.

Learned counsel for the petitioner submits that this land is the subject matter of another suit, which has been decreed against him and therefore, he is not in a position to sell the said land or create any encumbrance on the same to pay the Court fee. He further submits that the said fact has not been considered by the learned First Appellate Court and his

appeal is being adjourned, whereby the time for depositing the Court fee is being enlarged. He submits that vide order dated 24.11.2022(Annexure P-8), the learned First Appellate Court has granted last opportunity to deposit the Court fee.

The learned counsel for the petitioner further submits that the Court fee cannot be deposited but the First Appellate Court may take adverse inference and dismiss the appeal without considering it on merits. He further submits that the petitioner has been advised to challenge the said decree also in accordance with law but the fact is that the petitioner is not in a position to pay the Court fee to challenge the said decree also.

At this stage, issuance of notice shall only procrastinate the proceedings before the First Appellate Court and no prejudice shall be caused since no notice has yet been issued by the First Appellate Court to the respondent.

In the light of the above, the impugned order dated 23.09.2022 is set aside and the matter is remanded back to the First Appellate Court to consider the application afresh in light of the fact that the land measuring 04 Marlas, 04 Sarsai, which is recorded as in the ownership of the petitioner is itself the subject matter of another judgment and decree dated 08.11.2021 (Annexure P-5) passed against the petitioner in a civil suit titled as ***Sudesh Kumar Vs. Varinder Singh.***

Accordingly the present petition is disposed of in above terms.

(ALOK JAIN)
JUDGE

14.12.2022
Manju

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No