

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

CR-939-2022
Date of Decision:-**31.10.2023**

PARAMJIT KAUR

... Petitioner(s)

Versus

SANT RAM AND ANR.

... Respondent(s)

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Mr. Veenet Chaudhary, Advocate
for the petitioner.

Mr. D.V. Dhindsa, Advocate
for the respondent.

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KARAMJIT SINGH, J. (Oral)

1. The present revision petition has been filed by the petitioner against the order dated 22.1.2020 passed by the Court of Additional District Judge, Ambala, whereby the application filed by the petitioner under Order 33 Rule 1 CPC seeking permission to file appeal as an indigent person was dismissed.
2. The brief facts of the case are that respondents No.1 and 2 filed suit for possession by way of specific performance of agreement to sell dated 3rd January, 2014 against the petitioner and the said suit was contested by the petitioner but finally the same was decreed in favour of the

respondents No.1 and 2 and against the petitioner vide judgment dated 20.4.2019. Being aggrieved the petitioner filed an appeal in the Court of learned Additional District Judge, Ambala. Along with the appeal an application was filed by the petitioner under Order 33 CPC seeking permission to file the said appeal as a pauper. The said application was dismissed by the 1st Appellate Court of Additional District Judge vide impugned order (Annexure P-4) on the basis of report of Collector, wherein it was recorded that the petitioner is having 02-06 Bigahas land in State of Himachal Pradesh and she is also working in a private company and getting ₹8,000/- per month as wages.

3. I have heard the learned counsel for the parties.
4. The counsel appearing on behalf of the petitioner *inter alia* contends that the petitioner is a widow having two minor children, who are also dependent on her. It is further contended that as per the report of Collector dated 17.8.2019, 02-06 Bigahas of land is in the name of the family of the petitioner and the husband of the petitioner is missing for the last 5-6 years. The counsel for the petitioner further submits that the aforesaid land is not exclusively owned and possessed by the petitioner. It is further submitted that amount of ₹8,000/- per month earned by the petitioner by doing private job is not sufficient even to maintain the entire family comprised of 3 persons. So prayer is made that the petitioner who is a poor lady be permitted to file appeal as an indigent person as she is not possessing sufficient resources to pay the requisite Court fee of ₹59,000/-.

5. The present petition is contested by the counsel for the respondent who while supporting the impugned order *inter alia* submits that petitioner received ₹9 lacs as earnest money from respondents No.1 and 2 at the time of execution of agreement to sell dated 3rd January, 2014 and out of the said amount the petitioner could easily pay the requisite Court fee. The counsel for the respondent further contends that even otherwise as per the report of Collector the petitioner owns 02-06 Bigahas of land and is also earning ₹8,000/- per month by doing private job and thus the petitioner is having sufficient means to pay the Court fee. The counsel for the respondent further contends that there is no illegality or perversity in the impugned order and the present petition deserves to be dismissed.
6. I have considered the submissions made by counsel for the parties and gone through the report of Collector (Annexure P-5), on the basis of which the impugned order was passed by the 1st Appellate Court.
7. As far as question of receipt of ₹9 lacs as earnest money by the petitioner from the respondent at the time of execution of agreement to sell dated 3rd January, 2014, the same is the subject matter of the appeal which the petitioner intends to file as an indigent person. As per the report of the Collector the husband of the petitioner is missing for the last 5-6 years and she is having two minor sons and the petitioner is working in a private company and her monthly wages are ₹8,000/- and the family of the petitioner owns 02-06 Bigahas of land in the area of Himachal Pradesh. As per the report of Collector the annual income of the petitioner is ₹98,000/-. However, the report is

silent as to how much income the family of the petitioner is getting from aforesaid land measuring 02-06 Bigahas. Mere ownership of land does not mean that the petitioner is having regular income from the same. Further it is not clear as to whether the petitioner is in possession of the said land. For the purpose of disposal of application under Order 33 CPC what is contemplated is not possession of the property but sufficient means with capacity to raise money to pay the Court fees. Mere ownership or possession of land is not sufficient to establish that the petitioner is having sufficient means to pay the Court fees in the appeal specially when the report of the Collector is very clear that her husband is missing for the last 5-6 years and she is also looking after two minor children. Further if the petitioner is allowed to file an appeal as forma pauperis, this Court do not consider that any injustice would be caused to the respondent except that the petitioner will be allowed to contest the legality of the decree dated 20th April, 2019 passed by the trial Court against her.

8. Consequently the present petition is allowed. The order of the learned Additional District Judge dated 22nd January, 2020 (Annexure P-4) is set aside. The application filed by the petitioner under Order 33 CPC is allowed. The petitioner is hereby permitted to file appeal against the judgment dated 20th April, 2019 as a pauper. The 1st Appellate Court is directed to proceed ahead with the appeal in accordance with law.

31.10.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

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