

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

CR 3404/2023(O&M)

Date of decision: 31.05.2023.

Ram Kishore

.....**Petitioner.**

Vs.

Jagan Nath

.....**Respondent**

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sumit Sharma, Advocate for the petitioner.

Nidhi Gupta, J.

Present revision petition has been filed by the petitioner/ appellant seeking setting aside of the order dated 13.9.2018 (Annexure P-1) passed by Additional District Judge, Palwal whereby application filed by the petitioner under Order 44 Rule 1 CPC to permit him to contest the appeal filed by him as an indigent person has been dismissed. Petitioner has also laid challenge to order dated 14.3.2019 (Annexure P-2) passed by Id. Addl. District Judge whereby the main appeal filed by the petitioner has also been dismissed for want of Court fee. Petitioner has further prayed for staying the execution proceedings in Execution Petition No.8 of 2020 titled as Jagan Nath v Ram Kishore.

2. Brief facts of the case are that the respondent/plaintiff filed a suit for specific performance of the agreements to sell dated 11.6.2009 and 16.6.2010 in respect of agricultural land fully detailed in para 2 of the revision petition for a total sale consideration of Rs.4.90 lacs. Agreement to sell dated 11.6.2009 was duly executed and registered in the office of Sub Registrar,

Hodal vide document no.965 dated 11.6.2009 for which the respondent/plaintiff paid the petitioner a sum of Rs.1.86 lacs as earnest money out of total sale consideration of Rs.4.90 lacs. The time fixed for execution of the sale deed in pursuance of the above said agreements was 10.6.2010 on which date the respondent/plaintiff had undertaken to pay the balance sale consideration. From the record it appears that it is respondent's case that plaintiff came present in the office of Sub Registrar, Hodal on 10.6.2010 along with balance sale consideration but the appellant/defendant did not turn up. It has been averred in para 2 of the revision petition that "*on assurance of the petitioner/defendant the plaintiff came present in the office of Sub Registrar, Hodal on 10.6.2010 along with balance sale consideration and other necessary expenses but the appellant/defendant did not turn up. After waiting for the whole day the respondent/plaintiff was left with no option but to return.*" It has been further averred that the "*respondent/plaintiff contacted the defendant and asked him to perform his agreement to sell dated 11.6.2009 after which the defendant requested to execute the same after some time*". As such it was decided to execute the sale deed on 10.12.2010 after receiving balance sale consideration of Rs.3.04 lacs. As the petitioner failed to execute the sale deed even on the said date respondent/plaintiff issued legal notice dated 13.3.2012 to the petitioner. Finally, on or around 8.3.2013, the petitioner refused to execute the sale deed in favour of the respondent. In para 3 of the revision petition it has been averred that the petitioner had borrowed a sum of Rs.1.50 lacs with monthly interest @ 2% for 12 months from the plaintiff i.e. Rs.1.50 lacs + Rs.36,000/- total payable Rs.1.86 lacs.

3. Accordingly, the respondent was constrained to file present civil suit for specific performance of the Agreements to Sell dated 11.6.2009,

and 16.6.2010, which was decreed by the trial court vide judgment and decree dated 11.12.2017 (Annexure P-3). It is this judgment and decree dated 11.12.2017 against which the petitioner filed an appeal. Along with the appeal the petitioner filed present application under Order 44 Rule 1 CPC to allow him to pursue the appeal as indigent person. The said application was dismissed vide impugned order dated 13.9.2018 (Annexure P-1) and petitioner was directed to pay court fee by the next date of hearing but as the petitioner was unable to pay requisite court fee therefore, vide subsequent order dated 14.3.2019 petitioner's main appeal has also been rejected. Hence, the present revision petition.

4. It is submitted by the ld. counsel for the petitioner that Order 44 Rule 1 CPC stipulates as follows: -

1. Who may appeal as an indigent person - 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, subject, in all matters. including the presentation of such application, to the provisions relating to suits by indigent person, in so far as those provisions are applicable."

5. It is submitted that the object and purpose of order 33 and Order 44 of the Code of Civil Procedure are to enable a person, who is ridden by poverty or not possessed of sufficient means to pay court fee, to seek justice. Order 33 and Order 44 of the Code of Civil Procedure exempts such indigent person from paying requisite court fee at the first instance and allows him to institute suit or prosecute appeal in forma pauperis.

6. No other argument has been advanced by the ld. counsel for the petitioner.
7. Heard ld. counsel for the petitioner.
8. Perusal of the impugned order (Annexure P1) reveals that under Order 33 Rule 2 CPC, along with his application under Order 44 Rule 1 CPC, petitioner was also required to file an application supported by the affidavit to indicate as to what properties are owned by the petitioner, and the annual income of the petitioner from such properties. However, admittedly, no such affidavit was filed by the petitioner. Accordingly, ld. trial Court had sought a report from the District Collector, report of the Naib Tehsildar, Hassanpur in respect of properties in the ownership of the petitioner, if any. As per report (Annexure P-4) of the Naib Tehsildar, Hassanpur, petitioner owns 13Kanals 14 Marlas of land. Moreover, it has been recorded in the impugned order (Annexure P-1) that petitioner as DW1 has himself admitted that he has repaid the loan of Rs.1.86 lacs to the plaintiff. From these facts, it is clear that petitioner has some resources. As such, in my view, the petitioner cannot be said to be an indigent person. Thus, there is no error in the impugned order,
9. For the reasons stated above, finding no merit in this revision petition the same is hereby dismissed.
10. Application(s), if any, stand disposed of.

31.05.2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned	Yes
Whether reportable	Yes/No