

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.130

Case No. : CR-6035-2023 (O&M)

Date of Decision : January 15, 2024

Rita Sachdeva Petitioner
vs.
Sukhdeep Singh and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Ms.Shubhreet Kaur, Advocate
for the petitioner.

* * *

GURBIR SINGH, J. :

1. C.M.No.538-C-II of 2024 :

For the reasons mentioned in the application, the same is allowed and Annexures P-13 to P-16 are taken on record, subject to all just exceptions.

2. Main Case :

Challenge in the present revision petition filed under Article 227 of the Constitution of India is to the order dated 19.09.2023 (Annexure P-8), passed by learned Additional District Judge, Ludhiana, whereby application of the petitioner under Order 44 Rule 1 read with Section 151 CPC has been dismissed and the petitioner has been directed to file the requisite court fee within a period of 15 days from the date of the impugned order.

3. The brief facts of the case, as culled out from the paper book,

are that respondent no.1-Sukhdeep Singh (plaintiff) filed a civil suit for specific performance of agreement to sell dated 21.04.2005, for directing the defendants to execute sale deed of House No.639, Phase-I, Urban Estate, Dugri Road, Ludhiana (for brevity – the suit property). Further relief of permanent injunction was also sought for restraining the defendants from dealing with the property. The said suit was decreed by the concerned Trial Court on 20.01.2017, wherein the plaintiff was held entitled for relief of specific performance of the agreement to sell dated 21.04.2005.

4. In the meanwhile, husband of the petitioner, who was defendant no.1 in the suit, unfortunately died. It has been stated that the reason for entering into the aforesaid agreement to sell was only to meet the medical expenses, which were being incurred on defendant no.1 before his death. The petitioner, as wife of defendant no.1, later on decided to challenge the judgment and decree dated 20.01.2017, passed by the Trial Court and filed **Civil Appeal No.23 of 2017** before the Lower Appellate Court. Along with the appeal, an application under Order XLIV Rule 1 CPC was also filed stating that the petitioner/appellant was an indigent person. The learned Appellate Court, vide order dated 28.08.2018, dismissed the said application.

5. Feeling aggrieved, the petitioner filed revision petition before this Court being **C.R.No.6350 of 2018**, for setting aside the aforesaid order dated 28.08.2018. The said revision petition was allowed vide order dated 05.09.2022, with direction to the Lower Appellate Court to decide the application filed by the petitioner under Order XLIV Rule 1 CPC afresh, in accordance with law and the procedure laid down.

6. In support of her claim, the petitioner herself stepped into the witness box as AW-1 and also examined Ashok Sachdeva as AW-2. On the other hand, respondent Sukhdeep Singh also stepped into the witness box as RW-1.

7. After appreciating the evidence on record, the learned Lower Appellate Court held that at the time of execution of agreement to sell, the petitioner had received Rs.15,00,000/- from the respondent and also received the loan amount. During the trial before the learned Trial Court, the petitioner engaged 4-5 Advocates. She admitted that her son was doing job but no bank statement or salary slip of her son was placed on record to show that she was unable to pay the court fee. Ultimately, the Lower Appellate Court held that the petitioner was a lady of means. So, she was directed to pay the requisite court fee. Her application was held to be devoid of any merit and was accordingly dismissed.

8. Learned counsel for the petitioner has argued that the petitioner is dependent upon her son Nitin Sachdeva. In the application, it has been clearly stated that the agreement to sell was entered into to meet the expenses of the hospital and other treatment expenses. It is further argued that the property in dispute is the only residential property of the petitioner. She, along with her son, is residing in the rented accommodation. Even in the report of the Tehsildar(Annexure P-5), it is written that no person in the name of the petitioner was residing in the said house. The entire amount was spent on the treatment of her husband who was having various ailments.

He could not recover and died on 03.11.2012. The amount of Rs.15,00,000/- was paid in the year 2005, whereas the appeal is filed in the

year 2017. Since she had no money to pay the court fee, she requested one lawyer after the other to pursue her case on humanitarian grounds. Reliance is placed on Phoolwati vs. Gulzaro Devi reported as 2017(3) PLR 591 and also on a judgment of Hon'ble Apex Court in R.V. Dev vs. Chief Secretary, Government of Kerala reported as 2007 (3) RCR (Civil) 237.

9. I have heard learned counsel for the petitioner and perused the case file.

10. Though the instant petition has been filed by the petitioner but her son has been impleaded as proforma respondent. It is the case of the petitioner that she, along with her son, is residing in rented accommodation. It means that they form one family. The decree for specific performance, which has been challenged in the appeal, was also passed against her son who is proforma respondent no.6. In other words, the appeal is for the benefit of her son also. As per copy of Income Tax Return for the Assessment Year 2022-23, income of Nitin Sachdeva – son of the petitioner is Rs.4,99,910/-. The petitioner and her son are residing together and form one family, and son of the petitioner, against whom decree is also passed, instead of filing appeal, has been impleaded as proforma respondent no.6. No bank account transaction details of the petitioner has been brought on file to show that she is an indigent person. The burden is on the petitioner herself to prove that she is indigent person but she has failed to prove the same. Learned Trial Court has rightly held so.

11. In view of the above discussion, this Court does not find any merit in the present revision petition and the same is hereby dismissed. In the interest of justice, two months' time is given to the petitioner to affix the

requisite court fee with the ‘Memo of Appeal’. In the meantime, learned Appellate Court may hear the arguments but shall pass the final order only on the deposit of court fee. In case, court fee is not filed within two months, then the concerned Court is free to proceed further in accordance with law.

12. Pending applications, if any, shall stand disposed of along with this judgment.

January 15, 2024
monika

(GURBIR SINGH)
JUDGE

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