



119

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

CR-5136-2024 (O&M)

Date of Decision : 10.01.2025

Ashu Gupta

... Petitioner(s)

Versus

Harwinder Singh & Anr

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sunny K. Singla, Advocate for the petitioner.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the impugned order dated 14.05.2024 whereby the application of the plaintiff-respondent No.1 to sue as an indigent person under Order 33 Rules 1 and 2 of the Code of Civil Procedure, 1908, has been allowed.

2. Learned counsel for the petitioner would contend that though the application was filed during the period of Covid-19 Pandemic, however, it was incumbent on the plaintiff-respondent No.1 to have presented the application in person as per the provisions of Order 33 Rule 3 of CPC. It is further the contention of the learned counsel that the plaintiff-respondent No.1 has a house and, hence, could not have been treated as an indigent person.

3. I have heard the learned counsel for the petitioner.

4. In the present case the plaintiff-respondent No.1 herein filed a suit for damages on the ground that his wife, namely, Gagandeep Kaur, who was expecting, had gone for a regular check-up and she was advised stitching

of the cervix and for that purpose she was recommended a minor procedure/surgery. The wife of the plaintiff-respondent No.1, namely, Gagandeep Kaur, was taken to the Nursing Home of the petitioner in a healthy condition. After the surgery, the plaintiff-respondent No.1 was informed that his wife was recovering. It was further averred in the plaint that till 5 O'Clock on the day of the surgery, the plaintiff-respondent No.1 and other family members were not allowed to meet Gagandeep Kaur and thereafter they came to know that she is not well and when they tried to peep into the operation theater they saw that the petitioner and the nurses were trying to pump the heart of Gagandeep Kaur and after some time she was declared dead. It was further averred that the petitioner was a quack and not qualified to conduct the surgery and due to the incompetence, the wife of the plaintiff-respondent No.1 had died and a DDR had been registered. In the post-mortem report, it has been reported that cause of death was *Hemorrhagic Shock, Sufficient to cause death*. Alongwith the suit for recovery of damages, an application under Order 33 Rules 1 and 2 of CPC was also filed for suing as an indigent person. Reply was filed to the said application. Vide the impugned order the said application was allowed by the Trial Court. The plaintiff-respondent No.1, in the application for suing as an indigent person, has stated that he has only one room, one coat worth ₹200/-, one bedding worth ₹200/-, ten utensils approximate value of which was ₹250/- and some apparels worth ₹350/-. He has further stated that he has no other moveable or immoveable property and thus he be declared as an indigent person and the case be proceeded with without payment of court fees. On notice, the petitioner herein appeared and filed his reply contesting the application on the ground of maintainability and

not approaching the Court with clean hands. The contents of the application were denied. On the basis of the pleadings, the following issues were framed:

1. Whether the applicant is entitled to be declared as indigent person as per the provisions under Order 33 Rules 1 and 2 of CPC as prayed for ? OPA
2. Whether the suit of the applicant is maintainable in its present form ? OPA
3. Whether the applicant has concealed material facts from the court and therefore, he is not entitled for relief as prayed for ? OPR
4. Relief.
5. The Trial Court vide the impugned order held that the plaintiff-respondent No.1 owned a one room tenement and moveable assets worth ₹1,000/-. It was further held that the said property being the only residential property of the plaintiff-respondent No.1, was exempted under Section 60 of CPC and, hence, he could not be held to be a man of means.
6. The argument of the learned counsel for the petitioner that the application ought to have been presented in person deserves to be rejected for the reason that admittedly the suit and the application were filed during the period of Covid-19 Pandemic wherein there were restrictions on functioning of the Court as well as on the movement of General Public. In such a scenario, it cannot be held that since the person did not present the application in person, the application would be not maintainable. The second argument of the learned counsel for the petitioner that the plaintiff-respondent No.1 is a man of means is also noticed only to be rejected inasmuch as it has come on the

record that the plaintiff-respondent No.1 is in possession of only a one room tenement and moveable assets worth ₹1,000/-.

7. In view of the above, no fault can be found with the impugned order dated 14.05.2024 passed by the Trial Court. The present revision petition being devoid of any merit is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

10.01.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO