

(2013) 10 P&H CK 0185
In the Punjab And Haryana At Chandigarh
Case No : CR No. 6410 of 2013 (O and M)

Bhupinder Pal Kaur

APPELLANT

Vs

Amarj Surjit Singh

RESPONDENT

Date of Decision : 24-10-2013

Acts Referred:

Citation : (2013) 10 P&H CK 0185

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : V. Ranswaroop, for the Appellant;

Final Decision : Partly Allowed

Judgement

L.N. Mittal, J.

CM No. 21239-CII of 2013

1. Allowed as prayed for.

Main Case

Legal representative of original plaintiff since deceased has approached this Court by way of instant revision petition filed under Article 227 of the Constitution of India assailing order dated 20.08.2013 (Annexure P-5) passed by the lower Appellate Court thereby dismissing application (Annexure P-6) filed by the petitioner herein for dismissal of the first appeal (Annexure P-3), which has been instituted by defendants No. 1 and 2 against judgment (Annexure P-1) and preliminary decree (Annexure P-2) passed by the trial Court. Respondent herein was defendant No. 2 in the trial Court whereas his mother was defendant No. 1 in the trial Court. Defendant No. 1 has since died and is now represented by defendant No. 2-respondent as her legal representative.

2. Defendants No. 1 and 2/appellants before the lower appellate Court along with their appeal (Annexure P-3) filed application (Annexure P-4) alleging that the

appeal was required to be filed urgently but due to summer vacation, requisite Court fee for the appeal was not readily available. The appellants undertook to pay the requisite Court fee in due course. The appellants, therefore, prayed that payment of requisite Court fee for filing the appeal be exempted and the appellants be allowed to pay the Court fee in due course.

3. Petitioner herein in her application (Annexure P-6) pleaded that the appellants had not paid requisite Court fee on appeal with malafide intention and, therefore, the appeal is liable to dismissal on this ground. The appellants by filing reply (Annexure P-7) opposed the application and denied the averments made therein. The appellants also undertook to pay the Court fee as and when directed.

4. Learned lower Appellate Court vide impugned order dated 20.08.2013 (Annexure P-5) while dismissing application (Annexure P-6) filed by the petitioner herein directed the appellants to pay requisite Court fee on the appeal upto 24.08.2013 positively, otherwise the appeal will be rejected.

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

6. Counsel for the petitioner while stating that requisite Court fee has since been paid by the appellants in the lower Appellate Court, pursuant to impugned order (Annexure P-5), contended that the appellants in the lower Appellate Court intentionally did not pay the requisite Court fee while filing the appeal and avoided the payment thereof for more than 2 years and, therefore, they did not deserve any opportunity to pay the requisite Court fee as granted by the lower Appellate Court.

7. I have carefully considered the aforesaid contention, which cannot be accepted. The appellants along with their appeal moved application (Annexure P-4) stating the reasons for not paying the requisite Court fee at that time. They also undertook to pay the requisite Court fee in due course. It is correct that the appellants after opening of Courts after summer vacation should have been careful to pay the requisite Court fee. However, the lower Appellate Court also appears not to have passed any order in this regard on application (Annexure P-4). Even the petitioner herein did not take up the matter with the lower Appellate Court promptly, but filed application (Annexure P-6) dated 25.10.2012 belatedly. The lower Appellate Court again took ten months to dispose of the said application. However, when the appellate Court vide impugned order dated 20.08.2013 directed the appellants to pay the requisite Court fee upto 24.08.2013 i.e. within four days, the appellants promptly complied with the said direction.

8. Keeping in view all the aforesaid circumstances, I am of the considered opinion that the appellants were rightly permitted by the lower Appellate Court to pay the requisite Court fee, but the appellants should have been subjected to some costs for not having paid the requisite Court fee for more than two years. Impugned order of the lower Appellate Court suffers from illegality and jurisdictional error only to the extent of not imposing costs on the appellants.

The revision petition, therefore, deserves to be allowed to this extent only.

9. I intend to dispose of the instant revision petition without issuing notice to respondent so as to avoid further delay in disposal of the first appeal and also to save the respondent of the expenses he may have to incur in engaging counsel for the revision petition if notice thereof is issued to him.

10. Resultantly, the instant revision petition is allowed partly and impugned order (Annexure P-5) passed by the lower Appellate Court is modified only to the extent that the appellants shall pay Rs. 15,000/- as costs precedent to the petitioner herein for late payment of the Court fee on first appeal. Civil miscellaneous application for interim stay is disposed of as infructuous.