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*Before Bakhshish Kaur, J*

RAJIV GARG—*Petitioner*  
*versus*

SMT. PRITI RANI—*Respondent*

C.R. No. 3290 OF 2000

20th December, 2001

*Code of Civil Procedure, 1908—0.33 Rules 1 & 2—Suit for maintenance—Trial Court finding that the wife not having 'sufficient means' to pay the court fee and permitting her to sue as indigent person—No material irregularity in the exercise of jurisdiction by the trial Court—High Court has no jurisdiction to interfere with the finding of fact—Petition dismissed.*

Held, that in view of the evidence brought on record, the trial Court was not in error in accepting the plea of the respondent that she is not possessed of the means to pay court fee. Even if it is assumed that the trial Court was in error in accepting her plea that the FDRs in question are not in her possession, the High Court cannot interfere with the order passed by the Trial Court as the error would not amount to material irregularity in the exercise of jurisdiction.

(Para 13)

C.B. Goel, Advocate for the Petitioner.

Amar Vivek, Advocate for the Respondent.

#### JUDGMENT

(1) This revision petition is directed against the order whereby the applicant under Order 33 Rules 1 and 2 of the respondent was allowed to sue as an indigent person has been allowed by the trial Court.

(2) The marriage of Rajive with Priti Rani was solemnized on 11th July, 1997 according to Hindu rites. Soon thereafter, there arose dispute between the parties. The respondent left the matrimonial home in less than four months period of the marriage and lodged the FIR No. 158 dated 28th June, 1998 under Section 406/498-A against the petitioner and other family members. The articles of 'Istridhan'

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including Fixed Deposit Receipts were entrusted by her parents to the respondent and his parents and brother. Some articles were recovered from them and they are in possession of the police.

(3) Now, the applicant-respondent does not own any property. She is unable to maintain herself, therefore, she had filed suit for maintenance as an indigent person under Order 33 Rules 1 and 2 Civil Procedure Code (hereinafter referred to as the Code). The application under Order 33 Rule 1 and 2 of the Code was allowed. Hence this revision.

(4) I have heard Shri C.B. Goel, learned counsel for the petitioner and Shri Amar Vivek, learned counsel for the respondent.

(5) Mr. C.B. Goel, learned counsel for the petitioner contended that it is a case where the plaintiff-respondent has got sufficient income and means to pay the requisite court fee and by no stretch of reasoning, it can be said that she is an indigent person. She is earning interest on the amount of Rs. 75,000 which is lying deposited in Fixed Deposit Receipts (in short the FDRs) since July 09, 1997. The Fixed Deposit Receipts, though may be lying in the custody of the police, but the respondent has not chosen to take the delivery of the receipts. Thus, she cannot be permitted to take benefit of her own wrong by not approaching the authorities concerned for the delivery of receipts. It is, therefore, clear that she is intentionally not taking possession of the FDRs so as to avoid liability to pay the requisite court fee. It was also contended that it has come in evidence as also admitted by the respondent that the FDRs in the sum of Rs. 75,000 is lying deposited with the Punjab and Sind Bank, Barnala. This fact has not been disclosed by her either in the application or in the schedule attached to the application, therefore, because of concealment of facts, her claim to declare her as indigent person should have been rejected. Rule 1 of Order 33 CPC read as under :—

**“I, Suits may be instituted by indigent person.—**Subject to the following provisions, any suit may be instituted by an indigent person.

**Explanation I :** A person is an indigent person,—

(a) if he is not possessed of sufficient means (other than property exempt from attachment in execution of a

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decree and the subject matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or

- (b) Where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject matter of the suit.

**Explanation II.** Any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application, shall be taken into account in considering the question whether the applicant is an indigent person.

**Explanation III.** Where the plaintiff sues in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity.”

(6) Thus, by the words “sufficient means” what is contemplated is not possession of sufficient means and capacity to raise money to pay court fee. Mr. Goel, the learned counsel contended that the amount lying deposited in the FDRs has to be taken into consideration. She has source to raise money, therefore, it cannot be said that she has got no sufficient means to pay court fee. The learned counsel placed reliance of *Mithai Lal* versus *Jagan and others (1)*, *Chellammal* versus *Muthulakshmi Ammal (2)*, *Rajinder Singh* versus *Karnal Central Co-op. Bank (3)*, and *P.V. Chandrasekharan* versus *Thirumalai Chit Funds (4)*.

(7) In *Chellammal’s* case (*supra*), the petitioner obtained leave to appeal in forma pauperis by practising fraud by not disclosing all assets. It was held that leave must be cancelled. It was also observed that “utmost good faith is required of the petitioner in the matter of the disclosure of his or her assets, and that any intentional

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(1) AIR 1937 Allahabad 740  
(2) AIR (2) 1945 Madras 296  
(3) AIR 1965 Punjab 331  
(4) AIR 1989 Madras 30

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departure from good faith, whatever the motive may be, must result in the dismissal of the petition.

(8) In **Rajinder Singh and others's case (*supra*)**, also it was held that the person who seeks indulgence of the Court to sue as a pauper must be absolutely frank with the court in the matter of disclosure of his assets, for it is only where there is a genuine case of a pauper as defined in Order 33 Rule 1 of the Code, that the Court can dispense with the court fee which every citizen is expected to pay. The petitioner's application in that case, to sue as a pauper was dismissed by the trial Court. It was, therefore, held that where the petitioners have not been fair and frank in this respect and no cogent explanation has been given at the bar as to why the provision of law requiring a full disclosure of the assets has not been complied with, the petition is liable to be disallowed.

(9) The case of **P.V. Chandrasekharan and others (*supra*)** was a case where the petition was filed by the appellants to grant leave to them to file appeal as an indigent person and appellants therein were possessed of shares whose value was Rs. 80,000 and also owned land to the extent of 2.16 cents, worth more than Rs. one lakh. It was, therefore, observed that the mere fact that the respondents offer to purchase the properties of Rs. 1 lakh and the shares in the company of Rs. 54,000 it cannot be said that there is restraint. It is open to the petitioners to raise money over the properties and pay the court fee. It is not open to them to contend that only if it is shown that they are possessed of cash, it can be said that they are possessed of means to pay court fee.

(10) In **Mithai Lal's case (*supra*)**, the plaintiff applicant was not allowed to sue as indigent person and it was held that where a person who applied to sue as pauper for partition was entitled to a large share in this suit property as a member of a joint Hindu Family and the Court considering that he would be able to pay the court fee by raising money on the security of that share rejected the application, the Court was not in error.

(11) To meet this objection. Mr. Amar Vivek, learned counsel for the respondent places reliance on **A. Prabhakaran Nair versus K.P. Neelakantan Pillai (5)**, where it was held that the expression

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“possession of sufficient means” means capacity to raise money and not actual possession of property. The opposite party is not in any way concerned with the issue of notice to the Government pleader.

(12) In the given case in hand, the plaintiff-respondent has been permitted to sue as indigent person. The expression “possessed of sufficient means” to enable her to pay the court fee” would, therefore mean that she is able to pay the court fee. Whether the plaintiff-respondent in this case, has got sufficient means? The respondent in her statement before the trial Court stated that she is indigent person. She does not possess cash or gold ornaments nor does she possess moveable or immoveable property. In cross-examination, no doubt, she admitted that there is a Fixed Deposit Receipt for Rs. 75,000 in her favour lying deposited with the Punjab & Sindh Bank. She has made it clear by saying that the original receipts are not in her possession, but in the possession of her in-laws. She had approached the bank authorities to sanction loan against the FDRs, but they refused to do so. She has no knowledge if the police had recovered the FDR from them alongwith other articles or not.

(13) In my opinion, in view of the evidence brought on record, the trial Court was not in error in accepting the plea of the respondent that she is not possessed of the means to pay court fee. Even if it is assumed that the trial Court was in error in accepting her plea that the FDRs in question are not in her possession, the High Court cannot interfere with the order passed by the trial Court as the error would not amount to material irregularity in the exercise of jurisdiction, as also observed in Mithai Lal’s case (*supra*). The impugned order is certainly within the jurisdiction of the trial Court and not tainted with serious legal infirmity justifying interference. In this regard, reference is made to the observation made by the Hon’ble Mr. Justice I.D. Dua in **Rajinder Singh and others’s** case (*supra*), that the High Court will not interfere unless dictates of substantial justice demand interference, fully apply to this case.

(14) The extent of revisional powers of this Court is restricted under Section 115 of the Code. In **Pandurang Dhondi Chougule and others** versus **Maruti Hari Jadhav and others (6)**, it is held by the Supreme Court that the High Court cannot while exercising

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its jurisdiction under Section 115, correct errors of fact, however gross they may be, or even errors of law. It can only do so when the said errors have relation to the jurisdiction of the Court to try the dispute itself. It is only in cases where the subordinate Court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked.

(15) In view of the aforesaid, no case is made out to interfere with the impugned order. This revision is consequently dismissed.

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**R.N.R.**

*Before N. K. Sodhi, J. S. Narang, & Jasbir Singh, JJ*

UMED SINGH—*Petitioner*

*versus*

ARYA SMAJ SEWA SADAN —*Respondent*

C.R. No. 4999 OF 2000

23rd August, 2002

*Haryana Urban (Control of Rent & Eviction) Act, 1973—S.13—Rights of juristic persons—Nature & extent of—S.13(3) (a)(i)—Requires for 'his own occupation'—Interpretation of vis-a-vis a Charitable Trust—Requirement of a residential property by a Charitable Trust for housing a library—Whether falls within the ambit of the words 'for his own occupation'—Such residential property, whether can be used for a purpose other than residential purpose—Held, yes—Residential & non-residential buildings—Difference between, defined—Any activity not tainted with business or trade and essentially not connected with profit & loss would not render the usage of the building as 'non-residential building'.*

Held, that there is considerable substance in the analysis of definition of both the words 'non-residential building' and 'residential building' as have been defined in the Act. A very wide meaning has been ascribed to the word 'residential building' by stating that all other buildings which are not termed as 'non-residential buildings' would