

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 6920 of 2006

Date of Decision: 31.7.2007

Smt. Kartaro Bai

....Petitioner

Versus

Mohinder Pal

...Respondent

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri A.K. Khunger, Advocate, for the petitioner.

Shri Vinod Kumar Khunger, Advocate, for the respondent.

HEMANT GUPTA, J.

The challenge in the present petition is to the order passed by the learned District Judge, Ferozepur, on 12.10.2006, whereby the appeal was dismissed for non-payment of Court fee.

The petitioner filed an appeal as an indigent person before the learned District Judge. The application for permission to sue as an indigent person was declined by the learned first Appellate Court on 21.9.2006 holding that the petitioner is possessed of immovable property measuring 3 kanals 7 marlas. The appeal was dismissed for non-payment of the appropriate Court fee on 12.10.2006.

Learned counsel for the petitioner contends that the learned first Appellate Court has not granted any time to make up the deficiency in payment of Court fee and the appeal has been dismissed soon after the order was passed declining an application for permission to sue as an indigent person. It is argued that if one month's time is granted to the

petitioner, the petitioner shall make up the deficiency in payment of Court fee.

A perusal of the order passed by the learned first Appellate court on 21.9.2006 shows that no time was granted by the first Appellate Court to the petitioner to make up the deficiency in payment of Court fee. The appeal was dismissed for non payment of appropriate Court fee on 12.10.2006 i.e. in about two weeks' time. The time, thus, made available to the petitioner was not adequate. Consequently, in my opinion, the learned first Appellate Court has committed illegality in dismissing the appeal for not making up the deficiency in payment of Court fee.

Consequently, the order dated 12.10.2006 is set aside. The petitioner is permitted to make up the deficiency in payment of Court fee, on or before 31.10.2007. The learned District Judge, shall proceed with the decision of the appeal on merits, if the deficiency is made good on or before the time fixed.

The parties, through their counsel, are directed to appear before the learned District Judge, Ferozepur on 31.8.2007, for further proceedings, in accordance with law.

Copy of the order be given Dasti on payment of usual charges.

31-07.2007
ds

(HEMANT GUPTA)
JUDGE