

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 551 of 2014

1. Santoshi Bai W/o Late Mahavir Kanwar, aged about 25 years, R/o Boerdih, Thana & Tahsil Churiya, Distt. Rajnandgaon C.G.
2. Suleshwari D/o Late Mahavir Kanwar, aged about 6 months, being minor through mother Santoshi Bai, R/o Boerdih, Thana & Tahsil Churiya, Distt. Rajnandgaon C.G.

---- Applicants

Versus

1. Executive Engineer, C.G. State Electricity Board, Dongargarh Distt. Rajnandgaon (Now Chhattisgarh State Power Distribution Company Ltd., Dongargarh, Distt. Rajnandgaon C.G.)
2. State Of Chhattisgarh through Collector, Rajnandgaon C.G.

---- Respondents

For Applicants – Shri Parag Kotecha, Advocate.

For Respondent No.1 – Shri Vinod Deshmukh and Shri Durgesh Goyal, Advocates.

For Respondent No.2 – Shri Roshan Dubey, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

16/09/2015

1. Heard on the instant M.C.C. filed under Order 44 Rule 3 read with Order 33 Rule 1 of the CPC.
2. Learned counsel for the applicants had filed annexure A/1 which goes to show that the present applicants/plaintiffs before the Court below were granted permission to institute the suit as indigent person without paying the Court fees.
3. Learned counsel for the applicants submits that as the applicants/appellants/plaintiffs were granted permission to sue as indigent person by the trial Court itself, under the provisions of Order 44 Rule 3 Sub-rule 1 of the CPC, no further inquiry in respect of the question whether or not she is indigent person would be necessary if the applicant

has made an affidavit stating that she has not ceased to be an indigent person since the date of the decree appealed from. For this, the applicant had filed the affidavit in support of their application which is under Order 44 Rule 3 read with Order 33 Rule 1 of the CPC. Hence, they be permitted to sue and prosecute the instant first appeal also as indigent person.

4. On the other hand, learned counsel for respondent No.1 objected and submitted that as per provisions of law, the applicants have to file the application along with memo of appeal. Hence, the prayer made in this behalf be rejected. He further submitted that the applicant has to file application for the same, but no any application filed by the applicant for the same, hence, the prayer may be rejected.

5. On the basis of consideration regarding prayer made in the instant MCC, provisions in Order 44 Rule 3 Sub-rule 1 of the CPC are relevant which reads as under:-

“3. Inquiry as to whether applicant is an indigent person. – (1) Where an applicant, referred to in rule 1, was allowed to sue or appeal as an indigent person in the Court from whose decree the appeal is preferred, no further inquiry in respect of the question whether or not he is an indigent person shall be necessary if the applicant has made an affidavit stating that he has not ceased to be an indigent person since the date of the decree appealed from; but if the Government pleader or the respondent disputes the truth of the statement made in such affidavit, an inquiry into the question aforesaid shall be held by the Appellate Court, or, under the orders of the Appellate Court, by an officer of the Court.”

6. As required the applicant has to file an affidavit in the present case. Applicant Santoshi Bai had filed the affidavit supporting the contents made in the application under Order 44 Rule 3 read with Order 33 Rule 1 of the CPC.

7. On due consideration, the application fulfilled the requirement by filing an appropriate affidavit in support of the application, in the considered view of this Court provisions are duly followed. Consequently, the prayer made in this behalf by respondent No.1 is not acceptable.

8. On due consideration, the instant MCC is allowed. The applicant is permitted to sue and prosecute the instant first appeal as an indigent person under the provisions of Order 44 and Order 33 of the CPC.

9. Registry is directed to list the matter under the head of first appeal.

10. Registry is further directed to call for the record of the Court below through usual mode and fax mode and list the matter immediately thereafter for further hearing.

11. The MCC allowed.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE