

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Civil Case No.1163 of 2013**

Ismile Khan son of Yasin Khan Musalman (dead) through legal heirs:

1A. Smt. Firoza Khan widow of Late Ismile Khan, aged about 40 years, R/o Balaji Ward, Jagdalpur, District Bastar, Chhattisgarh

1B. Mohd. Farhan, son of Late Ismile Khan, aged about 19 years, R/o Balaji Ward, Jagdalpur, District Bastar, Chhattisgarh

1C. Ku. Afsa, D/o Late Ismile Khan, aged about 22 years, R/o Balaji Ward, Jagdalpur, District Bastar, Chhattisgarh

---- Applicants

versus

State of Chhattisgarh through Collector, Kabirdham (Kawardha)

---- Non-Applicant

For Applicants	:	Shri H.B. Agrawal, Senior Advocate with Shri Pankaj Agrawal, Advocate
For State/Non-Applicant	:	Shri B. Gopa Kumar, Deputy Advocate General

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per Navin Sinha, Chief Justice

21/12/2015

1. The present application has been filed for leave to appeal as indigent persons under Order 33 read with Order 44 of the Code of Civil Procedure.

2. Ismile Khan, the predecessor of the Applicants moved this Court in Miscellaneous Civil Case No.115 of 2004 to be declared as an indigent person to pursue the appeal against an order passed in reference under Section 18 of the Land Acquisition Act dated 20.8.2001. The application was allowed on 5.11.2012. After registration as First Appeal (M) No.149 of 2012, the matter was remanded on 29.11.2012. While the matter was pending before the Additional District Judge, Kawardha, Ismile Khan was deceased and was substituted by the present Applicants as his legal heirs.

3. After the Additional District Judge, Kawardha passed the final order

on 7.11.2013, the legal heirs desired to pursue the matters in appeal against the order dated 7.11.2013. They have likewise sought a declaration as indigent persons not to pay the Court-fees.

4. The present application was filed on 3.12.2013. Despite several opportunities, the Respondents have not come-up with any explanation or opposition how circumstances may have changed after the death of Ismile Khan and that his legal heirs do not fulfill the requirements to be declared as indigent persons even if Ismile Khan himself was found eligible.

5. In the peculiar facts and circumstances of the case, we are not satisfied that any useful purpose shall be served by repeatedly adjourning the matter for purposes in absence of any stand by the State of fundamental change in the fact, family and situation of Ismile Khan after his death because of which the present Applicants are not entitled to be declared indigent for the same reasons that their predecessor Ismile Khan was competent.

6. Let a formal First Appeal be registered now and place for admission.

7. The application is allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE