

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 278 of 2016**

1. Smt. Sumrit @ Sumit Bai Wd/o Nohruram Markam, Aged About 54 Years Caste Gond, R/o Village Daabgaon, Tahsil Nagri, District Dhamtari Chhattisgarh
2. Sanjay Kumar, S/o Late Nohruram Markam, Aged About 27 Years Caste Gond, R/o Village Daabgaon, Tahsil Nagri, District Dhamtari Chhattisgarh

---- Petitioners**Versus**

1. Assistant Executive Engineer Office Chhattisgarh Electricity Division, Nagri, Tahsil Nagri, District Dhamtari Chhattisgarh
2. Executive Engineer, Office Maintenance And Distribution, Chhattisgarh State Electricity Department Company Ltd. Dhamtari District Dhamtari Chhattisgarh
3. The State Of Chhattisgarh Thorough The Collector, Dhamtari, District Dhamtari Chhattisgarh

---- Respondents

For Petitioners:

Mr. P.P. Sahu, Advocate

For State:

Mr. S.C. Khakharia, Deputy Advocate
General**Hon'ble Shri Justice P. Sam Koshy****Order on Board****25.04.2016**

1. The present Petition has been filed by the Petitioners challenging the order dated 27.02.2016 passed by the Additional District Judge, FTC, Dhamtari in Misc. C.S. No. 32/2013 whereby the Application

moved by the Petitioners seeking exemption from depositing court fees under Section 35 of the Court Fees Act, 1870 (herein after 'the Act') has been rejected.

2. On the said Application the Court ordered to the Collector, District Dhamtari to conduct an inquiry ascertaining the financial status of the Petitioner-plaintiffs. The Collector in turn directed the Tahsildar to conduct an inquiry and submit its report. The Tahsildar after conducting an inquiry on the financial status of the Petitioner-plaintiffs submitted its report on 29.04.2015, Annexure P5 and as per the report the annual income of the Petitioners were more than Rs. 50,000/-. Based on the said report the Court below decided the Application under Section 35 of the Act rejecting the said Application directing the Petitioners to deposit the Court fees as is required.

3. Learned Counsel for the Petitioners submits that the findings of the Tahsildar as well as order of the Court below dated 27.2.2016 are bad in law for the reason that inquiry ought to have been conducted on the basis of the financial status of the Petitioners as on the date of the filing of the suit and authorities ought not have taken the subsequent improved financial status of the Petitioner-plaintiffs for ascertaining financial status for getting advantage under the provisions of Section 35 of the Act.

4. Having perused the order impugned and also the report on

inquiry that was conducted, the fact which is undisputed by the Petitioner-plaintiffs is that admittedly there was an order given by the Court below directing the Collector for holding an inquiry so far as the financial status of the Petitioner-plaintiffs are concerned. This order of the Court below directing the Collector was neither for ascertaining financial status of the Petitioner on the date of the filing of the Suit nor has the same been questioned by the Petitioner-plaintiffs. In addition, perusal of the record also reflects that the Petitioners do not dispute in the Writ Petition through its pleading that the findings given by the Tahsildar is not correct or that his annual income is not more than Rs. 50,000/- as has been given by the Tahsildar. In the absence of these facts in the Writ Petition and submissions made by the Petitioner-Plaintiffs that the Tahsildar ought to have ascertained financial status of the Petitioner as on the date of filing suit can not be accepted for the reason that the Tahsildar has given his report to the Collector based on the directions of the Court below to ascertain the financial status of the Petitioner-plaintiffs without giving any specific date.

5. In the opinion of this Court even the analogy sought to applied by the Petitioner seems to be illogical for the reasons that the Petitioner-plaintiffs moved application under Section 35 of the Act on the basis of its financial status and in case the financial status on inquiry is found to be much more than what is prescribed under the provisions of law there

is no reason that the Petitioner-plaintiffs should not pay the Court fees.

6. In the opinion of this Court there is no illegality or infirmity in the order passed by the Court below, accordingly the Writ Petition is dismissed.

Sd/-
(P. Sam Koshy)
JUDGE

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