

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 48 of 2016

1. Smt. Kavita Parmar W/o Late Naresh Parmar, Aged About 37 Years R/o 10/2272, Near Tank, Sector 1, Shiv Nandan Nagar, Khamtarai, Raipur, Tahsil Raipur Police Station Kham Tarai, Raipur Revenue & Civil District Raipur (Chhattisgarh) Pressent R/o Street No. 7, Block No. 1/ B Sector 8, Bhiali Police Station Kotwali, Bhilai Nagar, Tahasil Durg, Civil & Revenue District Durg (Chhattisgarh)
2. Ku Juhi Parmar D/o Late Naresh Parmar, Aged About 20 Years R/o 10/2272, Near Tank, Sector 1, Shiv Nandan Nagar, Khamtarai, Raipur, Tahsil Raipur Police Station Kham Tarai, Raipur Revenue & Civil District Raipur (Chhattisgarh) Pressent R/o Street No. 7, Block No. 1/ B Sector 8, Bhiali Police Station Kotwali, Bhilai Nagar, Tahasil Durg, Civil & Revenue District Durg (Chhattisgarh).....(Plaintiffs)

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Versus

1. Dr. Vivek Chodhari Aged About 45 Years Hospital Superintendent, R/o Dr. Bhim Rao Ambedkar Hospital, Mekahara, Raipur Police Station Mekahara Raipur Tahsil Raipur Civil & Revenue District Raipur (Chhattisgarh)
2. Dr. Vishnu Dutta Aged About 45 Years Professor & Head Of Department, R/o Dr. Bhim Rao Ambedkar Hospital, Mekahara, Raipur Police Station Mekahara Raipur Tahsil Raipur Civil & Revenue District Raipur (Chhattisgarh)
3. Dr. Prachi Dwivedi R/o Dr. Bhim Rao Ambedkar Hospital, Mekahara, Raipur Police Station Mekahara Raipur Tahsil Raipur Civil & Revenue District Raipur (Chhattisgarh)
4. Dr. Hulesh Modle R/o Dr. Bhim Rao Ambedkar Hospital, Mekahara, Raipur Police Station Mekahara Raipur Tahsil Raipur Civil & Revenue District Raipur (Chhattisgarh)
5. Vishal Jain R/o Dr. Bhim Rao Ambedkar Hospital, Mekahara, Raipur Police Station Mekahara Raipur Tahsil Raipur Civil & Revenue District Raipur (Chhattisgarh)
6. Dr. Prasanna R/o 13, Anand Nagar, Dr. R/o Dr. Bhim Rao Ambedkar Hospital, Mekahara, Raipur Police Station Mekahara Raipur Tahsil Raipur Civil & Revenue District Raipur (Chhattisgarh)
7. Vivek Patre R/o Dr. Bhim Rao Ambedkar Hospital, Mekahara, Raipur Police Station Mekahara Raipur Tahsil Raipur Civil & Revenue District Raipur (Chhattisgarh)
8. Staff Nurse Smt. Gitanjali Nair R/o Dr. Bhim Rao Ambedkar Hospital, Mekahara, Raipur Police Station Mekahara Raipur Tahsil Raipur Civil & Revenue District Raipur (Chhattisgarh)
9. Kedila Health Limited Through General Manager Kudium Industrial Estate Poda, Goa Police Station Poda Tahasil Civil & Revenue District Goa

10. Manager Shiv Nagar Estate, A Block, Dr. A. B. Road, Varli, Police Station Veri Civil & Revenue District Verli Mumbai 4000018.....
(Defendants)

---- Respondents

For Applicant	:	Mr. Amiyakant Tiwari, Advocate
For Non-Applicant	:	Non present.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Order On Board By Justice Inder Singh Uboweja

31/03/2016

1. Heard on admission.
2. Present appeal has been filed under Section 96 of the Code of Civil Procedure (for short, 'the Code') against the order dated 03.12.2015 passed by the Illrd Additional District Judge, Raipur in Misc. Judicial Case No.62/2009.
3. Registry has pointed out the defaults that Court Fee has not been paid by the appellants and also on the maintainability of the appeal.
4. Regarding depositing of Court fee, counsel for the appellants has filed application under Section 35 of the Court fee Act and the same has been rejected by the Registry of the Court on the ground that in the present appeal suit was not registered, only MJC was registered before the Illrd Additional District Judge, Raipur.
5. Learned counsel for appellants submits that the appeal filed under Section 96 of the Code is maintainable.
6. We have perused the order impugned and the office note.
7. In the matter of **Hardevinder Singh vs Paramjit Singh and others** reported in **(2013) 9 SCC 261**, the Apex Court has held in para 14 as under :

 14. After referring to Sections 96(1), 100, 104(1) and 105 of the Code, the Bench in *Ganga Bai (1974) 2 SCC 393* observed as follows :

“17. These provisions show that under the Code of Civil Procedure, an appeal lies only as against a decree or as against an order passed under rules from which an appeal is expressly allowed by Order 43 Rule 1. No appeal can lie against a mere finding for the simple reason that the Code does not provide for any such appeal. It must follow that First Appeal No. 72 of 1959 filed by Defendants 2 and 3 was not maintainable as it was directed against a mere finding recorded by the trial Court.”

8. Accordingly, the present appeal dismissed as not maintainable.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(I.S. Uboweja)
JUDGE