

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Civil Case No.18 of 2016**

- Gopal Prasad S/o Late Doulatram Sahu, Aged About 64 Years R/o Village Loharsi, Tahsil Masturi, District Bilaspur (Chhattisgarh).....(Plaintiff)

---- Applicant

Versus

- Dauaram Aged About 62 Years R/o Village Loharsi, Tahsil Masturi, District Bilaspur (Chhattisgarh)
- Kamlesh Kumar S/o Dauaram Sahu, Aged About 33 Years R/o Village Loharsi, Tahsil Masturi, District Bilaspur (Chhattisgarh).....(Defendents)
- Koushal S/o Dauaram Sahu, Aged About 27 Years R/o Village Loharsi, Tahsil Masturi, District Bilaspur (Chhattisgarh)

---- Respondents

For appellant : Shri Jitendra Gupta, Advocate
 For respondent No.1. : Shri VR Tiwari, Advocate.
 Smt. Shobha Kashyap, Dy. Govt. Advocate for the State.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****05.12.2016**

Heard.

2. Perused the report of the Collector, Bilaspur. Also considered IA No.01/16 for taking report of Collector, District Bilaspur on record in compliance of order of this Court .
3. On due consideration IA No.01/16 is allowed and report of the Collector, District Bilaspur along with other annexed documents are taken on record.
4. Also heard on IA No.02/16 for permission to file appeal as indigent person.

5. On perusal of para 7 of the application (IA No.2), the applicant/appellant has stated on oath that financial condition of the appellant/applicant is the same as it was before the trial Court, hence the MCC may be allowed. The said application is supported by an affidavit of the appellant/applicant.

6. Perused the order dated 08.9.14 passed by the trial Court whereby the appellant/applicant/plaintiff before the trial Court was granted liberty under Section 35 of the Court Fee Act, in which the trial Court after appreciation of the material held the annual income of the plaintiff as Rs.20,000/-.

7. The present applicant/appellant has stated on oath that there is not change in the financial condition of the applicant/appellant. On the other hand, as per the report dated 20.9.2016 of the Collector, the applicant is holding land bearing Survey No.913/2, 914/3 and 246 area 0.17 acres and 0.63 acres and in both the lands one Narad Singh is cultivating. The present applicant is a retired chowkidar. As per the report, entire family of the applicant consist of two married sons and one married daughter and the annual income of the whole family of the applicant is Rs.3,60,000/-. But the said report has not disclosed the independent income of the applicant as required under the law. Also the trial Court granted exemption to the applicant on the basis of the notification issued under Section 35 of the Court Fee Act after holding that annual income of the applicant as Rs.20,000/- only. Presently before this Court, the applicant has stated on oath that financial condition of the applicant is same as it was before the trial Court in compliance of order 44 Rule 3 of the CPC.

8. Upon consideration of the entire material available in the record, it appears that the applicant was permitted not to pay the Court fee before the trial Court and seems to be indigent person after the judgment and decree passed by the trial Court.

9. On due consideration, on the basis of the material available today, the applicant is permitted to file first appeal as an indigent person. However, during the pendency of the appeal, if any fact emerges contrary to the indigency of the applicant, appropriate order may be passed for payment of Court fee at any point of time.

10. The instant MCC is allowed.

11. Registry is directed to register the matter as first appeal.

12. As the said first appeal has been preferred within its limitation, heard on the question of admission.

13. Perused the impugned judgment and decree of the instant appeal.

14. The appeal is not liable for dismissal under Order 41 Rule 11 of the Code.

15. The appeal appears to be arguable.

16. The appeal is admitted for consideration.

17. As the respondents are represented, no notice is required to issued to them.

18. Notice of hearing shall be affixed on the notice board of this Court and also be sent to the Court of first instance, i.e. Fifth Additional District Judge, Bilaspur in accordance with Order 41 Rule 14 of the Code.

- 19.** The appellant is directed to furnish security of Rs.5,000/- before the Court of first instance for the cost of this appeal within a period of one month in accordance with Order 41 Rule 10 of the code.
- 20.** Learned counsel for the State is not required to continue with further proceedings of the first appeal as the State is not a party in it.
- 21.** Record of the Court below be requisitioned immediately.
- 22.** List this matter for final hearing in its due course.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE