

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 41 of 2017**

- Smt. Monalisha Agrawal W/o Shri Ajay Kumar Agrawal, Aged About 27 Years R/o Danipara Raigarh, District Raigarh, Chhattisgarh
(Plaintiff)

---- Appellant

Versus

1. Shri Ganda Rai Gupta S/o Late Makardwaj Gupta, R/o Post Chichor, Umariya, Tahsil Pusour, District Raigarh, Chhattisgarh
2. State Of Chhattisgarh, Through Collector Raigarh, Chhattisgarh(Defendants)

---- Respondents

For Appellant	:	Shri Alok Kumar Pandey, Advocate.
For Respondent/State	:	Shri Sanjeev Pandey, Government Advocate

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****27/03/2017**

Heard on admission.

2. This is a Miscellaneous Appeal filed under Order 43 Rule (1) of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908 in short) against the order dated 27.02.2017 whereby the trial Court has refused the plaintiff/appellant to institute a suit as an indigent person.

3. The undisputed facts of the case are that the plaintiff instituted a suit for recovery of Rs.10,43,474/- on 14.06.2010. In the suit, it was mentioned by the appellant/plaintiff at para 18 that she is an indigent person. While making such a prayer, the plaintiff was required to follow the provisions prescribed under Order 33 Rule 1 of the Code of 1908. However, in the instant matter, none of the provisions contained under Order 33 of the Code of 1908 have been

complied with as neither the application under Order 33 Rule 1 of the Code was filed nor any particulars with regard to moveable or immoveable properties have been mentioned, as required under sub-rule (2). Since the said provisions contained under Order 33 of the Code of 1908 have not been complied with, therefore, her claim to institute a suit as an indigent person was liable to be rejected by virtue of sub-rule (5) of Order 33 of the Code of 1908.

4. Be that as it may, the trial Court in order to provide the substantial justice, has directed the Collector to hold an enquiry in order to ascertain the fact as to whether the plaintiff is an indigent person or not? As per the direction of the Court, the concerned Collector has submitted its report, in which, it was found that the plaintiff belongs to Hindu Undivided Family and is not an indigent person. In view of the said report of the Collector coupled with failure in compliance of the provisions prescribed under Order 33 of the Code of 1908, it cannot be held that the plaintiff is an indigent person so as to entitle her to sue as an in indigent person. The trial Court has thus rightly refused the plaintiff to institute a suit as an indigent person, by way of impugned order dated 27.02.2017.

5. The appeal being devoid of merit is hereby dismissed.

6. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge