

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 134 of 2017**

1. Smt. Kalawati W/o Shri Shivcharan, Aged About 48 Years
2. Hemant Puri S/o Shri Shivcharan Ram, Aged About 31 Years
3. Smt. Sushila Puri @ Babli W/o Shri Hemant Puri, Aged About 26 Years
4. Ku. Kritanjali Puri D/o Shri Hemant Puri, Aged About 6 Years
5. Sheryas Puri S/o Shri Hemant Puri, Aged About 1 Year

Appellants No.4 & 5 are Minor Through their Father And Natural Guardian Appellant No.2, Hemant Puri S/o Shri Shivcharan Ram

All are R/o Ward No.6, Ramanujganj, Post, P.S. And Tahsil Ramanujganj, District Balrampur, Chhattisgarh

---- Petitioner**Versus**

1. Gopal Prasad Shrivastava S/o Late Kuldeep Sahay, Aged About 65 Years R/o Ward No.6, Ramanujganj, Post, P.S. And Tahsil Ramanujganj, District Balrampur, Chhattisgarh

---- Respondent

For Appellants

Shri A.K. Prasad, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

Order On Board**By**

Prashant Kumar Mishra, J.

26/07/2017

I.A.No.1

1. This is an application under Section 149 of the Code of Civil Procedure, 1908 (for short 'the CPC') for exemption from payment of Court fee.
2. This first appeal has been preferred by the plaintiffs whose suit has been dismissed under Order 7 Rule 11 of the CPC when they failed to pay the requisite Court fees, despite having refused the application under Section 35 of the Court Fees Act, 1870 (for short 'the Act, 1870').
3. In this appeal also the plaintiffs have not paid the requisite Court fees and have rather moved an application seeking exemption from payment of Court fees.
4. When we confronted the learned counsel for the appellants as to under which provision of law, over and above the provision contained in Section 35 of the Act, 1870, which in terms does not apply to the appeal proceedings and the proceeding under Order 44 Rule 1 of the CPC, such exemption can be allowed by the appellate Court, learned counsel would fairly submit that the subject application is moved in the peculiar facts and

circumstances of the case so that the poor litigant does not suffer for want of sufficient funds to pay the Court fees.

5. We are afraid, under the CPC or under the Act, 1870, we have no such discretion to grant exemption from payment of Court fees. If the appellants had no fund to pay the Court fees it was for them to have moved the required application before the trial Court.
6. At this stage, Shri Prasad, learned counsel appearing for the appellants, would submit that the appellants may be permitted to file a fresh suit along with an application under Order 33 Rule 1 of the CPC .
7. For the above liberty prayed for by Shri Prasad, we may profitably refer the decision of the Supreme Court in **Shiv Kumar Sharma v. Santosh Kumari**¹, wherein it has been held that in any event, if a second suit was maintainable in terms of Order 2 Rule 4 of the Code, as was submitted by Ms. Luthra, no leave was required to be granted therefor. A civil court does not grant leave to file another suit. If the law permits, the plaintiff may file another suit but not on the basis of observations made by a superior court.

1 (2007) 8 SCC 600

8. In view of the above, we observe that if law permits, the plaintiffs may file another suit and for that no liberty is needed to them.
9. Accordingly, I.A.No.1 seeking exemption from payment of Court fees is dismissed, being not maintainable.
10. Ordinarily, if such application is rejected the appellate Court allows some time to the appellant to pay Court fees, however, in view of the statement made by Shri Prasad that the plaintiffs are not in a position to pay the Court fee, rather they would prefer to file a fresh suit along with an application under Order 33 Rule 1 of the CPC, if such suit is maintainable, we are not allowing further time to the plaintiffs for payment of Court fees.
11. As a consequence of dismissal of I.A.No.1, the First Appeal (FA No.134 of 2017) is also dismissed with the observation as stated *supra*.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Arvind Singh Chandel

