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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 574 of 2017**

Smt. Shyamvati Dhruv, aged about 52 years, W/o Shri Pawan Kumar Dhruv, R/o Chuna Bhatti, Near Primary School, Raman Mandir Ward, Raipur, Tehsil and District – Raipur (C.G.)

---- **Petitioner****Versus**

Smt. Kachari Bai, aged about 52 years, w/o Shri Laxman Sahu, R/o Tikarapara, Raipur, Tehsil and District – Raipur (C.G.)

---- **Respondent**

For Petitioner: Mr. Shiv Kumar Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board**21/08/2017**

(1) The trial Court passed a decree for granting delivery of possession in favour of the petitioner/defendant, which was affirmed by First Appellate Court, by its judgment and decree dated 30.04.2016 passed in Civil Appeal No.40-A/2012 with one condition of making application for assessment of the Court fee to be preferred within three months from 30.4.2016.

(2) The plaintiff made an application within the said period and accordingly by order dated 10.03.2017 the court fee was determined as Rs.24,280/- and fixed the next date of hearing as 07.04.2016.

(3) The plaintiff paid court fee on 5.5.2017 along with an

application under Section 149 of the Code of Civil Procedure (for short "CPC"), that application was allowed by order dated 20.07.2017 rejecting application filed by the defendant stating that time for payment of court fee can be extended by the trial Court, against which instant writ petition has been filed questioning the same.

(4) Learned counsel for the petitioner would submit that such a period of payment of court fee could not have been extended by the trial Court as the Court fee ought to have been paid on or before 7.4.2017 whereas the court fee was paid on 5.3.2017 as the decree was conditional. He placed reliance upon the decision of the Supreme Court in the matter of **Mahanth Ram Das Vs. Ganga Das**¹.

(5) I have heard learned counsel for the petitioner and perused the order impugned with utmost circumspection.

(6) The First Appellate Court while affirming the decree of the trial Court granted delivery of possession has made a decree conditional that the plaintiff has to make an application for assessment of the court fee within three months from 30.04.2016 and the plaintiff did so by filing application within a period of three months and, therefore the court proceeded and made assessment of the court fee quantified to be Rs.24,280/-and fixed the case on 7.4.2017 along with application under Section 149 of the Code of Civil Procedure, which the Court has extended the for one month by exercising power under Section 149 CPC, which

1 AIR 1961 SC 882

has been challenged by the defendant relying upon the decision of the Supreme Court in the matter of **Mahanth Ram Das (supra)**.

(7) The decree was conditional to the extent of making application for determination of the court fee, which the plaintiff has already undisputedly and admittedly has complied with and the trial Court has rightly exercised its discretion in extending the period of one month for payment of court fee, in which I do not find any illegality warranting interference by this Court under Article 227 of the Constitution of India.

(8) Accordingly, the writ petition being devoid of merit is liable to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-