

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCC No. 337 of 2009**

1. Smt. Kamla Devi wife of Shoukilal aged 47 years, By caste Teli, Occupation Agriculturist, resident of Village Kurma Pali, Tahsil and District Raigarh (Chhattisgarh)
2. Omprakash S/o Shoukilal, aged about 35 years,
3. Karuna Sagar S/o Shoukilal, aged about 29 years

Both are resident of Village Kurma Pali, Tahsil and District Raigarh (Chhattisgarh)

---- Applicants

Versus

1. Poonamchand Soni son of Late Surajbhan Soni, aged 50 years, Occupation, Business, resident of Kotra Road, Tahsil and District Raigarh (Chhattisgarh)

---- Respondent

For Applicants	:	Shri H.B. Agrawal, Sr. Advocate with Smt. Itu Rani Mukharjee, Advocate
For Respondent	:	Shri R.K. Pali, Advocate

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

28/02/2017

1. Heard on I.A.No.1/2007 for condonation of delay in filing the MCC as the instant MCC followed by proposed First Appeal has been preferred after 99 days of its limitation.
2. Learned counsel for the respondent has opposed I.A.No.1/2007.
3. On due consideration of the reasons mentioned in I.A.No.1/2007 and the arguments advanced on behalf of the applicants, this Court is of the considered view that the applicants had satisfactorily explained the delay of 99 days in preferring the MCC followed by proposed First Appeal. Consequently, I.A.No.1/2007 is hereby allowed. Delay in filing the MCC and the proposed First

Appeal is hereby condoned.

4. Also perused the report of the Tehsildar dated 29.4.2013. As per the report, in the name of Shoukilal (since dead) the immovable property is of area 0.774 hectare. There is a mud house of the applicants' family. Total 9 members are there in the family. The applicants are engaged in labour job and the agricultural job. In the name of the family members, the ration card below poverty line has been issued and the total annual income for the year 2012-2013 is about Rs. 50 thousand only.

5. Also perused the report of Additional Registrar (Judicial) dated 4.10.2013. In the said report, Additional Registrar has supported the facts mentioned in the report of Tehsildar.

6. Both reports are opposed by the respondent.

7. The present applicants were the defendants before the Court below. With this, they had no opportunity to pay the Court fee. Since they are challenging the judgment and decree passed by the Court below, they are required to make submission regarding their indigency.

8. On due consideration, in the considered view of this Court, the applicants have no sufficient means to enable them to pay the fee prescribed by law to file the First Appeal. Consequently, the instant MCC preferred under order 44 Rule 1 read with Order 33 Rule 1 of the Code of Civil Procedure, 1908 (for short the Code) is hereby allowed. The applicants are exempted to pay the Court fee for the First Appeal filed.

9. Registry is directed to register the matter under the head of First Appeal.

10. It is further observed that at any subsequent hearing anything contrary is surfaced then the Court after consideration may direct to deposit the Court fee.

11. Also heard on the question of admission.
12. Perused the impugned judgment and decree and the instant First Appeal.
13. The delay in filing the instant First Appeal of 99 days has been condoned. The appeal is not liable for dismissal under order 41 Rule of the Code. The appeal appears to be arguable.
14. The appeal is admitted for consideration.
15. The respondent is represented hence, the appellants are not required to pay separate PF for the respondent.
16. 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. Court of 4th Additional District Judge (FTC), Raigarh (CG) in accordance with Order 41 Rule 14 C.P.C.
17. The appellants are directed to furnish security of Rs.5,000/- each before the Court of first instance for the cost of this appeal and the cost of the Court below within a period of one month in accordance with Order 41 Rule 10 C.P.C.
18. The respondent had also preferred First Appeal No. 211/2006.
19. List the present First Appeal along with First Appeal No. 211/2006 for final hearing after 2 weeks.

Sd/

(Chandra Bhushan Bajpai)
Judge