NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 775 of 2016

- Bhagwan Dass Soni S/o Babu Lal Soni, Aged About 55 Years R/o Indrapuri Nagar, Tifra, District Bilaspur, Chhattisgarh ..... (Defendant)

---- Applicant

Versus

- Smt. Nirmala Gupta D/o Khorbahera, Aged About 35 Years R/o Om Nagar, Jarhabhata, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh .....(Plaintiff)

---- Respondent

For Applicant : Shri Sanjeev Sahu, Advocate
For Respondent : None

Shri S.K. Mishra, PL represented the State for submission of report as directed by this Court.

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

27/02/2017

1. Notice issued to the respondent for hearing on the instant MCC returned unserved as he is not traceable on the given address.

2. Heard on I.A.No.1/2016 as the instant MCC and proposed First Appeal has been preferred after 39 days of its limitation.

3. For the reasons mentioned in I.A.No.1/2016 and the facts surfaced in the entire material this Court is of the considered view that the applicant/appellant had satisfactorily explained the delay of 39 days.

4. Consequently, I.A.No.1/2016 is hereby allowed. Delay of 39 days is hereby condoned.

5. Also heard the instant MCC finally.

6. By filing the instant MCC, the applicant/defendant had prayed under Order 44 Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 (for

short the Code) to exempt the applicant from paying requisite Court Fee as required to file the First Appeal against the judgment and decree dated 14.6.2016 passed by the Additional District Judge, Bilaspur (CG) in Civil Suit No. 355 A/2014 wherein the applicant was defendant.

7. Perused the report submitted on behalf of the State regarding availability of sufficient means with the applicant to pay the fee prescribed by law before this Court.

8. As per the said report of the Collector, the applicant is living in the house constructed over Survey No. 732/5 measuring 0.01 acres. The approximate value of the said house is Rs.3,50,000/- . The applicant is working as a Guard and the annual income is approx. Rs. 54,000/-. There are 8 members in the family of the applicant and in the name of his wife a BPL Ration Card is in existence for the family.

9. Heard regarding indigency of the applicant.

10. As the applicant was defendant before the trial Court, with this, he was not required to pay any Court fee before the trial Court. The suit filed by the respondent before the trial Court was in connection with the same house as aforementioned for specific performance and permanent injunction against the applicant, with this, the said immovable property is the suit property; besides this he was working as House Guard in the Colony and thereby earning his bread. Looking to the members of the family, the applicant comes below poverty line and possesses a Ration Card of the Category.

11. In the considered view of this Court, the applicant is not having sufficient means to pay the requisite Court fee as required. With this, he is an indigent person as shown in Order 33 Rule 1 of the Code and therefore, he may be allowed to prefer the appeal as forma pauperis under order 44 Rule 1 of the Code.

12. On due consideration, the instant MCC preferred by the applicant is

hereby allowed. The applicant is permitted to prosecute the First Appeal without paying the Court fee as required. However, if anything is surfaced during subsequent hearing regarding the competency of the applicant to pay the Court fee, the Court after consideration may order to pay the Court fee.

13. The instant MCC is allowed.

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

15. Also heard on the question of admission.

16. Perused the impugned judgment and decree and the instant First Appeal.

17. The delay in filing the instant First Appeal along with the MCC of 39 days has been condoned. The appeal is not liable for dismissal under order 41 Rule 11 C.P.C. The appeal appears to the arguable.

18. The appeal is admitted for consideration.

19. 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 Additional District Judge, Bilaspur (CG) in accordance with Order 41 Rule 14 C.P.C.

20. The appellant is directed to furnish security of Rs.5,000/- 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.PC.

21. The notice issued to the respondent before hearing of the MCC returned unserved as he was not traceable.

22. Learned counsel for the appellant would pray for an opportunity to take suitable steps available under the law for service to the respondent.

23. List the matter for further hearing after 3 weeks. Sd/

(Chandra Bhushan Bajpai)
Judge

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