

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.739 of 2017

Suraj Bai, Wd/o Late Pyarelal Yadav, Aged about 65 years, R/o Nariyal Kothi, Dayalband, Bilaspur, Tahsil Bilaspur, District Bilaspur (C.G.)

---- Petitioner

Versus

1. Bhagwan Saran Singh Dixit, S/o Kedar Singh Dixit, Aged about 65 years, R/o Village Nariyara, Post Office Nariyara, P.S. Pamgarh, Tahsil Akaltara, District Janjgir-Champa (C.G.)
2. Smt. Smita Bole, Aged about 32 years, Caste Sunkar, Occupation House Wife, R/o Nayapara, Dayalband, Bilaspur, District Bilaspur (C.G.)
3. State of Chhattisgarh, Through the Collector, Bilaspur, District Bilaspur (C.G.)

---- Respondents

For Petitioner: Mr. Atanu Ghosh, Advocate.
For Respondent No.1 / State: -
Mr. S.M. Ali, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

10/10/2017

1. Learned counsel for the petitioner submits that application under Section 35 of the Court Fees Act, 1870 (for short, 'the Act') has been rejected without holding any enquiry to find out as to whether the petitioner is entitled for exemption from payment of court fees under Section 35 of the Act, therefore, the impugned order is liable to be set aside.
2. Learned State counsel would submit that the impugned order is strictly in accordance with law.

3. I have heard learned counsel for the parties and considered their rival submissions and also gone through the documents available on record with utmost circumspection.
4. In the matter of **Bir Singh v. Ghansram**¹, the Madhya Pradesh High Court has held that the trial Court is obliged to make due enquiry regarding prayer for exemption from court fees for considering the application under Section 35 of the Act. Similarly, in the matter of **Gajendra Singh Arya v. State of M.P.**², it has been held that the trial Court while considering the application under Section 35 of the Act should make enquiry after issuing notice to the Collector, as the matter relates to the revenue of the State.
5. Admittedly, in this case, no notice was issued to the State though it was party and the application has been decided. The order impugned is set aside and the case is remitted back to the trial Court for holding enquiry after issuing notice to the Collector, Bilaspur and to decide the entitlement of the petitioner for exemption from payment of court fees, strictly in accordance with law.
6. The writ petition is allowed to the extent indicated herein-above. There shall be no order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

1 2000 (3) MPHT 77 (NOC)

2 2000 (2) MPLJ 50