

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCC No. 503 of 2016**

1. Parvati Bai W/o Late Ubaran Das, Aged About 43 Years R/o Odadabari, Tahsil Pandariya, District Kabirdham, Chhattisgarh
2. Virendra Kumar, S/o Late Shri Ubaran Das, Aged About 23 Years R/o Odadabari, Tahsil Pandariya, District Kabirdham, Chhattisgarh

---- Applicants**Versus**

1. Purushottam Yadav S/o Vishnu Yadav, Aged About 45 Years R/o Odadabari, Tahsil Pandariya, District Kabirdham, Chhattisgarh
2. Ganga Bai W/o Bhagwat Satnami, Aged About 50 Years R/o Odadabari, Tahsil Pandariya, District Kabirdham, Chhattisgarh
3. State Of Chhattisgarh Through The Collector, District Kabirdham, Chhattisgarh

--- Respondents

For Applicants	:	Shri Sanjay Agrawal, Advocate
For Respondent 1	:	Shri Abhishek Pandey, Advocate
For Respondent 3	:	Smt. Shobha Kashyap, Dy.GA
None for respondent 2 though served.		

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

06/01/2017

1. Delay of 66 days in filing the MCC has already been condoned by allowing I.A.No.1/2016 on 24.10.2016.
2. Heard on I.A.No.2/2016 for taking report/document on record in compliance of order dated 24.10.2016.
3. On due consideration, I.A.No.2/2016 is allowed. The report submitted on behalf of the State is taken on record.
4. Heard on the instant MCC.
5. The applicants were defendants in Civil Suit No. 2B/12 with this, they were not required to pay Court fee as defendants. Since the judgment and decree has been passed against them, they intended to prefer First Appeal. As

per the applicants they are pauper and unable to pay the required Court fee in the filed MCC. As directed vide order dated 24.10.2016 report is called from respondent 3/State.

6. Perused the memo of the State dated 26.12.2016. In the said report, it is mentioned that the applicant No1 is working as Aanganbadi Sahiyaka. Her annual income is Rs.25,000/-. She is not having any immovable property and also a BPL Ration Card holder. Though the report does not say anything regarding applicant No.2, but on perusal of the document annexed as Annexure A/1, it appears that applicant No.2 is also a member of BPL Card and with this, prima facie applicant No.2 has demonstrated that he is not having sufficient means to pay the Court fee. Even otherwise, as the decree has been passed against both the applicants, hence, the said applicants are challenging the said decree and judgment. The Court has to appreciate the entire matter and the case of applicants No. 1 and 2 may not be separated. Also the State had not said anything regarding the pauperism of the applicant No.2 and looking to the document Annexure A/1, this Court is of the considered view that both the applicants are indigent persons as defined in Order 33 of the C.P.C. and with this, they may appeal as an indigent person under the provisions of Order 44 C.P.C. Consequently, on being satisfied with the report submitted by the State, the documents annexed for the indigency, the MCC is allowed. The applicants are permitted to prosecute the matter as indigent persons for the moment. If anything contrary to the above appreciation surfaced in future, the Court may direct for the deposition of Court fee as and when occasion arises.

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

8. Registry is directed to call for the record of the concerned Civil Suit through usual and fax mode.

9. Heard on the question of admission.

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

11. On perusal of the matter, the appeal is not liable for dismissal under order 41 Rule 11 C.P.C. The appeal appears to be arguable.

12. The appeal is admitted for consideration.

13. Since the respondents are served and represented the appellants are not required to pay separate PF for service on them.

14. 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 District Judge, Kabirdham (Kawardha) in accordance with Order 41 Rule 14 C.P.C.

15. 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.

16. Learned counsel for respondent No.1 sought time to file written response/ objection on I.A.No.3/2016 of the instant First Appeal for grant of interim relief/stay.

17. As prayed, list the matter after a week.

Sd/

(Chandra Bhushan Bajpai)
Judge