

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Civil Case No.103 of 2016**

- Late Bhajan Bai (Since Dead) Through Her Legal Heirs
 - 1.A** Hirmaniya W/o Phagalram, Aged About 65 Years Caste Kanwar, Occupation Agriculture, R/o Village Khamar Toli, P. S. & Tehsil Batauli, District Surguja (Chhattisgarh)
 - 1.B** Sonpati Aged about 42 Years D/o Phagalram, Caste Kanwar, Occupation Agriculture, R/o Village Khamar Toli, (Boda) P. S. & Tehsil Batauli, District Surguja (Chhattisgarh).....(Plaintiffs)

---- Applicants**Versus**

1. Dilsai S/o Devsai, Aged About 45 Years R/o Village Sarmana, Tehsil Sitapur, District Surguja (Chhattisgarh)
2. Sanmatiya W/o Dilsai, Aged About 40 Years R/o Village Sarmana, Tehsil Sitapur, District Surguja (Chhattisgarh)
3. State Of Chhattisgarh Through The Collector, Surguja, District Surguja (Chhattisgarh).....(Defendants)

---- Respondents

For applicants	: Shri Nishikant Sinha, Advocate
For respondents 1 & 2	: Shri Atanu Ghosh, Advocate
For respondent No.3/State	: Shri Satish Gupta, Govt. Advocate

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment On Board****12.01.2017**

As prayed, the applicant had filed an affidavit along with covering memo as required under Order 44 Rule 3(1) of the CPC on the ground that the appellants/plaintiffs have not ceased to be the indigent persons since the date of decree of appeal and also the trial Court allowed the applicants/appellants to sue as indigent person during trial.

2. Learned counsel for the applicants prayed that though vide order dated 30.8.2016, this Court directed to place the matter before Registrar (Judl.) to conduct enquiry to ascertain the financial status of the appellant to determine whether the appellant would fall within the category of an indigent person or not. In compliance of the said order, the applicants have not appeared before the Registrar (Judl.) for the said enquiry on the ground that as per the provisions contained under Order 44 Rule 3(1) CPC, the said enquiry is not required. On the other hand, the applicant is required to file an affidavit in compliance of Order 44 Rule 3(1) of CPC and as the applicant has complied the mandatory provisions of law, the Court may not proceed further with the enquiry before the Registrar (Judl.) as directed.

3. Learned counsel for the applicant had mentioned the judgment and decree passed by the Court below filed by the then plaintiff, i.e. present applicants who are the legal heirs of the then plaintiff Bhajan Bai, their names were duly incorporated during hearing of FA No.19A/14. And as the first appellate court set aside the judgment and decree passed by the trial Court, the plaintiff of the original suit/respondents of the first appeal/present applicants have filed instant MCC followed by the second appeal for consideration, hence, prayed that instant MCC may be allowed and the second appeal may be heard on admission and to proceed further in the matter.

4. As the applicants have complied with the provisions of law contained in Order 44 Rule 3(1) CPC there is no need to examine

their status regarding pauperism from Registrar (Judl.). With this, prayer of the applicants is allowed and the matter is considered on the basis of affidavit filed by the applicants and the documents annexed.

5. A perusal of the entire material and in absence of any counter affidavit on behalf of the respondents it appears that the plaintiffs were granted liberty to file a suit as pauper which reflects from the judgment at para 26 last two lines and also in the decree of the trial Court. Before the first appellate court, as the present applicants were arrayed as respondents, they were not required to pay any court fee. The first appellate Court allowed the appeal and set aside the judgment and decree passed by the trial Court in favour of the appellant. The present applicants were aggrieved with the said judgment and decree passed by the first appellate court and then only occasion arises for payment of court fee. On perusal of the affidavit applicant No.1(A), he has stated on oath that the plaintiffs were allowed to sue the civil suit as indigent persons and were granted live to sue the civil suit as indigent person since the date of decree appealed from. In absence of any counter affidavit the statement of oath is prima facie acceptable.

6. Provisions of Order 44 Rule 3(1) CPC is also applicable in the second appeal as there is no any separate provision for the same.

7. On due consideration and also with the fact that delay in filing the instant MCC has already been condoned vide order

dated 19.7.2016, the MCC is allowed and the applicants are permitted to sue the matter as pauper without paying court fee as required for the moment. It is further observed that if subsequently anything contrary to the above fact is surfaced, then the applicants may be asked to pay the requisite court fee as required.

8. MCC is hereby allowed. Registry is directed to register the matter under the head of second appeal. Though the second appeal is barred by limitation by 7 days as per the note of the Registry but vide order dated 19.7.16 while considering IA No.01/15, which is for the condonation of delay in filing the appeal, is already condoned. In the light of the said order delay in filing the instant second appeal is deemed condoned.

9. Registry is directed to requisite the record of the trial court as well as the record of first appellate court through usual and fax mode.

10. Registry is further directed to list this matter for hearing on admission after two weeks.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE