

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.524 of 2016

Prabhat Kumar Dubey, S/o Bihari Lal Dubey, aged about 57 years,
R/o D-16, Near Career School, Gayatri Mandir, Vinoba Nagar, Near
Durga Pandal, Bilaspur, Tahsil and District Bilsapur (C.G.)

(Defendant No.1)

---- Petitioner

Versus

1. Smt. Sandhya Goyal, W/o Sudhanshu Prakash Goyal, aged about 46 years, through power of attorney holder Sudhanshu Prakash Goyal, R/o D-16, Sector-2, Devendra Nagar, Raipur, at presently residing at 5037B Sector 38, West Chandigarh (Punjab)
2. Smt. Jyoti Varyani, W/o Shri Prakashchand Varyani, aged about 52 years, R/o D-16, Devendra Nagar, Raipur, Tahsil and District Raipur (C.G.)

---- Respondents

For Petitioner:	Mr. H.B. Agrawal, Senior Advocate with Mrs. Preeti Yadav, Advocate.
For Respondent No.2:	Mr. Hari Agrawal, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

15/05/2017

1. The impugned order imposing cost of ₹ 10,000/- upon defendant No.1 / petitioner herein has been challenged by him in this writ petition under Article 227 of the Constitution of India.
2. Mr. H.B. Agrawal, learned Senior Advocate for the petitioner, would submit that in view of ceiling prescribed in Section 35-A of the CPC that cost should not be more than ₹ 3,000/-, imposition of cost of ₹ 10,000/- is bad in law. He would further submit that the rules as prescribed under Order 20-A, Rule 3 of the CPC have not been framed by the High Court.

3. Mr. Hari Agrawal, learned counsel for respondent No.2, would submit that in a decision in the matter of **Sanjeev Kumar Jain v. Raghubir Saran Charitable Trust and others**¹, the Supreme Court has categorically held that compensatory cost of ₹ 3,000/- deserves to be enhanced and it should be at least ₹ 1 lakh. He would further submit that the cost imposed is under Section 35-B of the CPC in which no limit of cost has been prescribed. He would also bring to the notice of the court that in this case, by order dated 28-2-2013 passed in F.A. No.146/2012, the Division Bench has directed for expeditious disposal of the suit, but yet, on obstruction being created by the petitioner, the suit is still not being disposed of.
4. I have heard learned counsel for the parties and considered their rival submissions made herein-above.
5. The trial Court has imposed cost of ₹ 10,000/- while rejecting an interlocutory application which has been challenged by the petitioner / defendant No.1. The suit is at the stage of evidence. It is true that defendant No.1 is not cooperating in expeditious disposal of trial and the application was found merit-less, yet the cost to be imposed by the trial Court has to be within the limits prescribed by the Code of Civil Procedure, 1908. The cost imposed by the trial Court appears to be compensatory, as the trial Court has directed that out of the cost so deposited, ₹ 3,500/- each be paid to defendant No.2 and the plaintiff. Therefore, compensatory cost should not exceed ₹ 3,000/- as prescribed by Section 35-B of the CPC, particularly when the trial is not concluded and only the interlocutory application has been rejected by the trial Court and cost has been imposed finding the

¹ (2012) 1 SCC 455

application merit-less.

6. As a fallout and consequence of above discussion, the impugned order is set aside and the cost is reduced to ₹ 3,000/- which shall be paid to defendant No.2, as directed by the trial Court.
7. The writ petition is allowed to the extent indicated herein-above. No costs.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma