

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

MCC No. 56 of 2018

- Smt. Hoshiyari Bai Wd/o Ram Kishore Singh Aged About 46 Years Occupation Housewife, R/o Ambedkar Nagar, Ward No.4, Patthalgaon, District Jashpur, Chhattisgarh (Defendant)

---- Appellant

Versus

1. Smt. Asha Sharma W/o Ratanlal Sharma Aged About 48 Years Occupation Housewife, R/o Kashmiri Gali, Ward No.5, Patthalgaon, District Jashpur, Chhattisgarh (Plaintiff)
2. State of Chhattisgarh Through The Collector, Jashpur, District Jashpur, Chhattisgarh (Defendant No.2)

---- Respondents

12/10/2018	Ms. Sharmila Singhai, Advocate for the appellant. M. T. Das, Advocate for respondent No.1. Shri Sameer Behar, PL for the State. This MCC has been filed under Order 44 Rule 1 CPC. Learned counsel for the appellant submits that the appeal memo has been preferred under Order 44 Rule 1 CPC, which refers for filing of the appeal as an indigent person and the procedure to be followed under Order 33 CPC. It is further contended that Order 33 Rule 1- A CPC contemplates that enquiry to be made into the means of the indigent person and it is stated that the enquiry in the instant case has been made by the State, wherein the State found the appellant to be indigent person as per Order 33 Rule 1-A CPC. It is further stated that the defendant's application to claim as an indigent person is further covered under Order 33 Rule 2 CPC and the here in the instant case the entire property of the appellant has been shown and the ration card as also the property held by the appellant separately has been shown in the covering memo. Therefore, under the circumstances, there is no other ambiguity arises to hold the appellant as a indigent person, as such the

appellant may be allowed to sue as a pauper.

Perused the documents as also the relevant provisions of the Code of Civil Procedure. Order 44 Rule 1 necessarily refers that if the appeal is filed, it would be covered by Order 33 CPC which takes within its sweep the filing of the suit as an indigent person meaning thereby the appeal if as an indigent person is preferred, the enquiry which is required after filing of the civil Suit under Order 33 CPC would necessarily be followed. Therefore, the Order 33 Rule 1 A CPC refers to an enquiry that the Court may order for an enquiry of the same either by the chief ministerial officer of the Court, unless the Court otherwise directs and may adopt the report of such officer as its own finding or may itself make an inquiry into the question. In the instant case the perusal of the judgment would show that the defense of Order 33 Rule 2 CPC satisfies the property which has been shown as also the Order 33 Rule 3 CPC which speaks that the such memo should be presented in person. The State has come out with the reply after enquiry that the present appellant do not hold any property and the Court Court fee has been shown to be Rs.42,020/- and the appellant is in receipt little and higher of Rs.3000/- per month which would lead to show that she has to survive herself, for livelihood under the circumstances, the application under Order 44 Rule 1 CPC is allowed. The appellant is allowed to be contest the appeal as an indigent person.

Registry is directed to register the case as a First Appeal.

List it thereafter for admission after two weeks.

The interim relief granted earlier to continue till the next date of hearing.

Sd/-
Goutam Bhaduri
Judge