

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 94 of 2018**

Vashishtha Sharma (Vishwakarama) aged about 52 years, S/o. Ramanand Vishwakarma,
R/o. In front of Seema Fancy Stores, Badhaipara, Raipur, Tahsil and District Raipur (C.G.)
----Defendant No. 2

----Petitioner**Versus**

1. Smt. Sushila Sharma, W/o. Ramsagar Sharma, aged about 61 years, R/o. Near
Water Tank, Behind Friend Pan Palace, Bajrang Nagar, Raipur, Tahsil and District Raipur
(C.G.) Respondent No.1/plaintiff

2. Munnalal Vishwakarma, S/o. Ramanand Vishwakarma, aged about 62 years, R/o.
In front of Seema Fancy Stores, Badhaipara, Raipur, Tahsil and District Raipur (C.G.)

Respondent No. 2/defendant No.1

3. Smt. Usha Sharma, W/o. Subhash Sharma, aged about 35 years, R/o. Near Water
Tank, Behind Friend Pan Palace, Bajrang Nagar, Raipur, Tahsil and District Raipur (C.G.)

Respondent No. 3/defendant No. 3.

---- Respondents

For Petitioner	: Shri Manoj Paranjpe, Advocate.
For respondents	: Shri Dharendra Prasad Pandey, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****27/10/2018**

1. Learned counsel for the petitioner submits that application under Section 35 of the Court Fees Act, 1870 (for short 'the Act') filed by respondent No. 1/plaintiff has been allowed without holding any enquiry to find out as to whether the respondent No.1 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.

5. In view of the aforesaid legal position, the order impugned is set aside and the case is remitted to the trial Court for holding enquiry for deciding the entitlement of the respondent No. 1/plaintiff for exemption from payment of court fees, strictly in accordance with law.

6. The Writ petition is allowed to the extent indicated herein-above. The shall be no order as to cost(s).

7. Copy of the order be sent to the trial Court through concerned District Judge.

Sd/-

(Sanjay K. Agrawal)
Judge

1 2000 (3) MPHT 77 (NOC)

