

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 90 of 2018

Sheikh Arman S/o Late Sheikh Ramjan Aged About 76 Years R/o
Bajnathpara, Raipur, District Raipur Chhattisgarh.

---- Appellant

Versus

1. Sheikh Ahsan S/o Late Sheikh Ramjan R/o Infront Of Nure Nabi,
Raja Talab, Nai Basti, Raipur Chhattisgarh.
2. The Special Duty Officer Diverted Land, Branch Raipur
Chhattisgarh.
3. The Zone Commissioner Municipal Corporation, Raipur, Zone
No.3, Shankar Nagar, Under Water Tank, Raipur Chhattisgarh.
4. The State Of Chhattisgarh Through The Collector , Raipur,
District Raipur Chhattisgarh.

---- Respondents

For appellant- Shri S.C. Verma, Advocate.
For respondent No.3 -Shri Pankaj Agrawal, Advocate.
For State-Shri Dilman Rati Minj, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

29/10/2018

Heard.

1. Instant appeal is against the order dated 10/09/2018 whereby an application under Order 33 Rule 1 of the CPC has been dismissed.
2. Learned counsel submits that Order 33 Rule 1 CPC application though was preferred but then has been dismissed summarily even without going into enquiry as to whether the appellant/plaintiff has sufficient means to raise court fees. He submits that Order 33 Rule 4 CPC there is mandate has been created that if such application has been filed the appellant could have been examined before the court so as to adjudge his capability to raise court fees. He submits that without any enquiry prima facie the appellant cannot be adjudged as a man of means without there being an enquiry.
3. Learned counsel for the respondents opposes the same.

4. Perused the order dated 10/09/2018. Perusal of the order do not satisfy that the court has followed the procedure laid down in Order 33 CPC and had gone in to enquiry. Order shows that simply by considering the fact that the appellant is discharging job of tailor application has been dismissed.

5. Order 33 Rule 4 CPC cast an obligation on the court to make an enquiry. Only by simple appearance it cannot be adjudged whether the particular person is capable of paying court fees or not. Under the circumstances, it appears that enquiry report with respect to financial status was called from the State and simplicitor the application was dismissed. Under the facts the trial court is directed to make an enquiry as contemplated under Order 33 Rule 4 of CPC so as to come to a definite finding as to whether the appellant is able to raise court fees requisite for the civil suit or not on the basis of enquiry.

6. With such observation, the appeal stands disposed of.

7. Parties shall appear before the court below on 13th November, 2018.

Sd/-

(Goutam Bhaduri)

JUDGE