

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 153 of 2019

- Musammat Aaveda Khatun D/o Late Fakir Mohammad Aged About 66 Years W/o Mohhammad Rauf Khan ,r/o Fakirabad ,near City Jhanda Chowk, Pandri, Tehsil And District Raipur Chhattigarh.
----- **Appellant**

Versus

1. Zameer Ahmad Ansari S/o Late Fakir Mohammad Aged About 62 Years R/o Fakirabad Near ,city Jhanda Chowk Pandri, tehsil And District Raipur Chhattisgarh.
2. Lukman Bhai Aged About 36 Years R/o Fakirabad Near, City Jhanda Chowk Pandri Tehsil And Distrct Raipur Chhattisgarh.
3. Raju Bhai Aged About 31 Years R/o Fakirabad Near, City Jhanda Chowk Pandri Tehsil And Distrct Raipur Chhattisgarh.
4. Kaju Bhai Aged About 29 Years R/o Fakirabad Near, City Jhanda Chowk Pandri Tehsil And Distrct Raipur Chhattisgarh.
5. Nisar Bhai Aged About 36 Years R/o Fakirabad Near, City Jhanda Chowk Pandri Tehsil And Distrct Raipur Chhattisgarh.
6. Musammat Khairunisa W/o Late Rustam Bhai Aged About 66 Years R/o Fakirabad Near, City Jhanda Chowk Pandri Tehsil And Distrct Raipur Chhattisgarh.
7. Salim Bhai Aged About 41 Years R/o Fakirabad Near, City Jhanda Chowk Pandri Tehsil And Distrct Raipur Chhattisgarh.
8. Allauddin Aged About 53 Years R/o Fakirabad Near, City Jhanda Chowk Pandri Tehsil And Distrct Raipur Chhattisgarh.
9. Smt. Putli Bai Aged About 41 Years R/o Fakirabad Near, City Jhanda Chowk Pandri Tehsil And Distrct Raipur Chhattisgarh.
10. Irshad Bhai Aged About 39 Years R/o Fakirabad Near, City Jhanda Chowk Pandri Tehsil And Distrct Raipur Chhattisgarh.
11. Junaid Master Aged About 33 Years R/o Fakirabad Near, City Jhnada Chowk Pandri Tehsil And Distrct Raipur Chhattisgarh.
12. Dr. Anis Aged About 28 Years R/o Fakirabad Near, City Jhnada Chowk Pandri Tehsil And Distrct Raipur Chhattisgarh.

13. Ishteyak Ali Aged About 31 Years R/o Fakirabad Near, City Jhanda Chowk Pandri Tehsil And Distrct Raipur Chhattisgarh.
14. Kamal Bhai Aged About 36 Years R/o Fakirabad Near, City Jhanda Chowk Pandri Tehsil And Distrct Raipur Chhattisgarh.
15. State Of Chhattisgarh. Through The Collector Raipur Chhattisgarh. ---- **Respondents**

For the Appellant	:-	Shri Rahul Tamaskar, Advocate
For the Respondent/State	:-	Shri Rajendra Tripathi, PL

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board By

Prashant Kumar Mishra, J.

21.02.2019

1. This is an application for restoration of First Appeal No. 213/2018.
2. First Appeal No. 213/2018 was preferred by the applicant/appellant challenging the trial Court's final order dated 11.01.2018 which reads thus:-

“Today the case is for fixed for summoning the defendant No. 6 through publication, but he could not be served due to non filling of PF etc by the plaintiff.

On perusal of the case file, it is revealed that case is pending since 10.09.2007 and since then it is pending for summoning the defendants, but summoning could not be completed due to non filling of PF etc by the plaintiff on most occasions even after several directions of this Court. The plaintiff has filed the PF etc for dated 24.08.2019

and thereafter for dated 29.03.2016 and thereafter for dated 13.12.2017. He has not filed the PF etc for today even after the specific direction of this Court. This conduct of the plaintiff proves that he is habitual in flouting the Court directions. It also seems that he wants to keep the litigation pending unnecessarily. Therefore, considering the facts in totality, the plaintiff deserves no leniency so, the plaint of the plaintiff is hereby rejected under Order VII rule 11 (f) of Civil Procedure Code.

Memo of cost be prepared.

File be consigned in the record room after due compliance.”

3. When the First Appeal was filed in this Court, appellant moved an application under Section 35 of the Court Fees Act for exemption from payment of Court Fees and on 24.08.2018 the following order was passed in First Appeal No. 213/2018:

“In the matter of **Dena Bank Versus Jayant Triyumbuk Daate & Ors**, in First Appeal No. 55 of 2011, this Court has passed a detailed order 31.08.2017, to hold that the benefit of exemption from payment of Court Fees on the strength of notification issued by the State Government in exercise of power under Section 35 of the Court Fees Act is not available in appeal.

In view of the settled legal position, the appellant's application filed under Section 35 of the Court Fess Act for exemption from payment of Court Fees is not maintenance.

Accordingly, I.A. No. 2 is dismissed.

The appellant is allowed 10 weeks time to make payment of requisite Court Fee, failing which the appeal shall stand dismissed automatically without further reference to the Court.”

4. Having failed to make payment of Court Fees within 10 weeks, the applicant has filed present MCC on 29.01.2019 seeking restoration of the First Appeal on the ground that the appellant is an indigent person but application under Section 35 of the Court Fees Act was wrongly filed before this Court. Therefore, the First Appeal be restored enabling the applicant to move an application under Order 44 Rule 1 CPC for permission to prosecute the appeal as an indigent person.

5. Perusal of the order passed by the trial Court would reveal that the suit was filed on 10.09.2007 without payment of Court Fees and during the pendency for about 11 years, even notices could not be served due to non payment of process fee on different occasions.

6. Had the appellant been an indigent person, application under order 44 Rule 1 CPC would have been moved in the very beginning or at least restoration application could have been moved within 10 weeks as was allowed by this Court on 24.08.2018.

7. Considering the conduct of the appellant/plaintiff all throughout, we are not inclined to take any different view of the matter. The application is dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Vimla Singh Kapoor

PAWAN