

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 472 of 2018**

Shiv Banjare, S/o Shri Hiralal Banjare, Aged about 45 years, Secretary, Gram Panchayat Kuhera, Tahsil Aarang, Police Station Mandir Hasoud, District Raipur (C.G.), R/o Abhanpur, Police Station Abhanpur, District Raipur (C.G.)

----Petitioner/Defendant No. 4

1. Smt. Lachhni Banjare, W/o Shri Motilal Banjare, aged about 45 years, Ex-Sarpanch, Gram Panchayat Kuhera, Tahsil Aarang, District Raipur (C.G.), R/o Village Kotrabhata, Police Station Rakhi, Tahsil Aarang, District Raipur (C.G.)
(Plaintiff)

2. State of Chhattisgarh, Through the Collector, Raipur, District Raipur (C.G.)

3. Chief Executive Officer, Zila Panchayat, Raipur, District Raipur (C.G.)

4. Chief Executive Officer, Janpad Panchayat, Aarang, District Raipur (C.G.)

5. Devendra Dhidhi, S/o Shyamlal Dhidhi, Secretary, Gram Panchayat Nawagaon (Khapri), Tahsil Aarang, Police Station Mandir Hasoud, District Raipur (C.G.), R/o Village Chicha, Tahsil Aarang, Police Station Mandir Hasoud, District Raipur (C.G.)

6. Ramadhar Ratre, S/o Jagdev Ratre, Secretary, Gram Panchayat Ganound, Tahsil Aarang, Police Station Mandir Hasoud, District Raipur (C.G.), R/o Village Nawagaon (Highway), Police Station Abhanpur, District Raipur (C.G.)

---- Respondents

For Petitioner	:	Mr. B.D. Guru, Advocate.
For Respondent No. 1	:	Mr. A.D. Kuldeep, Advocate.
For Respondents/State	:	Ms. K. Tripti Rao, PL

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

14/02/2019

1. Invoking writ jurisdiction of this Court under Article 227 of the Constitution of India, instant writ petition has been filed by the petitioner/defendant No. 4 questioning the order passed by the trial Court under Order 33 Rule 1 of the Code of Civil

Procedure (for short "CPC") whereby the respondent No.1/plaintiff has been held to be an indigent person.

2. Learned counsel appearing for the petitioner/defendant No. 4 would submit that the trial Court is absolutely unjustified in allowing the application filed by respondent No.1/plaintiff under Order 33 Rule 1 of the CPC without making enquiry into the means of plaintiff before declaring him indigent person and even provisions of Order 33, Rule 6 & 7 of CPC has not been followed while deciding the application for permission to sue as indigent person.

3. Per contra, counsel for respondent No.1 would support the impugned order.

4. I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

5. By the impugned order, the trial Court has declared the respondent No.1/plaintiff as an indigent person and permitted him to sue as indigent person. However, the procedure to adjudicate the application under Order 33 Rule 1, 2, 3 & 4 particularly Rules 6 & 7 have to be followed by making enquiry into the means of respondent No.1/ plaintiff before deciding the aforesaid application.

6. Order 33, Rules and 6 & 7 provides as under:

"6. Notice of day for receiving evidence of applicant's indigency.- Where the Court sees no reason to reject the application on any of the grounds stated in Rule 5, it shall fix a day (of which at least ten days' clear notice shall be given to the opposite party and the Government pleader) for receiving such evidence as the applicant may adduce in proof of his [indigency], and for hearing any evidence which may be adduced in disproof thereof.

7. Procedure at hearing.- (1) On the day so fixed or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may examine the applicant or his agent, and shall make [a full record of their evidence].

[(1-A) The examination of the witnesses under sub-rule (1) shall be confined to the matters specified in clause (b), clause (c) and clause (e) of Rule 5 but the examination of the applicant or his agent may relate to any of the matters specified in Rule 5]

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court [under Rule 6 or under this rule], the applicant is or is not subject to any of the prohibition specified in Rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as [an indigent person].

6.. Thus, the aforesaid rules would clearly show that the enquiry in the application has to be made and evidence has to be recorded with regard to plaintiff's indigency and after considering evidence under Order 33 Rule 7 of the CPC, order has to be passed under Order 33 Rule 1 of the CPC.

7. The Supreme Court in **Mathai M. Paikeday Vs. C.K. Antony**¹ has held as under:-

“19. Moreover, the factors such as person's employment status and total income including retirement benefits in the form of pension, ownership of realizable unencumbered assets, and person's total indebtedness and financial assistance received from the family members or close friends can be taken into account in order to determine whether a person is possessed of sufficient means or indigent to pay

1 (2011) 13 SCC 174

requisite court fee. Therefore, the expression “sufficient means” in Order 33 Rule 1 of the Code of Civil Procedure contemplates the ability or capacity of a person in the ordinary course to raise money by available lawful means to pay court fee.”

8. Reverting to the facts of the case in light of principles of law laid down by the Supreme Court in the above-cited case (supra), it is quite vivid that without following procedure prescribed in Order 33 Rules 1 and 2 particularly Rules 6 & 7 of the CPC, the respondent No. 1/plaintiff has been permitted to be sued as an indigent person by the impugned order, which in the opinion of this Court is bad and unsustainable in law. Thus, the impugned order is liable to be and is hereby set aside. The matter is remitted to the trial Court for deciding the application afresh filed under Order 33 Rule 1 of the CPC filed by the respondent No.1/plaintiff for permission to sue as an indigent person after making enquiry under Order 33 Rules 1 & 2 particularly in Rules 6 & 7 of the CPC and that will be decided by the trial Court expeditiously preferably within a period of 45 days from the date of receipt of certified copy of this order.

9. The writ petition is allowed to the extent indicated hereinabove.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

