

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MCC No. 499 of 2018**

1. Jain and Brothers, a Partnership Fir, Budhapara, Sadar Bazar, Raipur
2. Inderchand Dhariwal S/o Late Uttamchand Dhariwal, Aged About 69 Years R/o 11/2, Sadar Bazar, Raipur CG
3. Smt. Pushpa Surana W/o Late Deepak Surana, Aged About 54 Years R/o Shankar Nagar, Raipur CG
4. Smt. Garima Nahar D/o Late Deepak Surana, Aged About 54 Years R/o Shankar Nagar, Raipur CG

---- Applicants**Versus**

1. State of Chhattisgarh through Secretary, Department of Housing and Environment, Mantralaya, Mahanadi Bhawan, Raipur CG
2. Raipur Development Authority, G.E. Road, Raipur CG

---- Non-applicants

For applicants	:	None.
For respondent No. 1	:	Shri Gagan Tiwari, Dy. Govt. Adv.
For respondent No. 2	:	None.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Sharad Kumar Gupta, Judge****Order On Board****Per : Sharad Kumar Gupta, Judge****17-10-2019**

1. Considered the material available on record.
2. The MCC is admitted.
3. Applicants have preferred this MCC under Section 13 of the Court Fee Act, 1870 (in short 'Act of 1870').
4. Applicants had filed a plaint against non-applicants along with an application under Section 14 of the Limitation Act. The Trial Court rejected that application and also rejected the plaint under Order VII Rule 11 (d) of the Civil Procedure Code, 1908 (in short 'CPC'). In the first appeal filed by the applicants, this Court set aside the order of the Trial Court and directed the Trial Court to

decide the matter of limitation after framing of issue along with other issues and the issue regarding limitation shall not be tried as a preliminary issue.

5. Case of the applicants is that they are entitled to receive back entire court fee paid by them on the memorandum of appeal as envisaged under Section 13 of the Act of 1870. Thus, the Collector concerned may be directed to refund the said court fee to them.
6. Counsel for the respondent No. 1 formally opposed the MCC.
7. It would be pertinent to quote the provisions of Section 13 of the Act of 1870 which reads thus :-

“13. Refund of fee paid on memorandum of appeal.—If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in Section 351 of the same Code, for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal...”

8. From the provisions of Section 13 of the Act of 1870, following legal propositions emerge :-
 - I. Refund of court fee may be ordered to be received in those cases where subordinate court has rejected appeal or plaint on any of the grounds mentioned in the CPC;

ii. Refund of court fee may be ordered to be received in those cases where the case is remanded in appeal on any of the grounds mentioned in Section 351 of the old CPC which is incorporated under Order XLI Rule 27 of the new CPC for a second decision by the subordinate court.

9. In the case in hand, the plaint was rejected by the Trial Court under Order VII Rule 11(d) of the CPC on the ground that it is barred by limitation and this Court in appeal ordered that plaint would be received.

10. Looking to the above mentioned facts and circumstances of the case, looking to the provisions of Section 13 of the Act of 1870, this Court finds that in the case in hand the provisions of Section 13 attract and the applicants are entitled to get full refund of the court fee paid by them on the memorandum of appeal.

11. Consequently, the MCC is allowed. It is directed that a certificate be issued in favour of the applicants by the Collector concerned authorizing them to receive back full amount of court fee paid by them on the memorandum of appeal.

12. Parties shall bear their own costs.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge