

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURREVP No. 55 of 2020

- Beniram S/o Raghubir Sahu Aged About 48 Years R/o Village Birejhar, Tahsil Kurud, District Dhamtari, Chhattisgarh. ----- **Petitioner**

Versus

1. Irfan Surya S/o Abdul Ujjak Surya Aged About 24 Years, R/o Village Laxmi Nagar Pachpedi Naka Raipur, Tahsil And District Raipur, Chhattisgarh.
2. Harakhchand Jain, H. U. F. Karta Shri Harakhchand Jain, S/o Bhanwar Pugaliya, R/o Village Shailendra Nagar Raipur, Tahsil And District Raipur, Chhattisgarh.
3. Smt. Arpita Jain W/o Yogesh Valaryani Aged About 21 Years, R/o Village Shailendra Nagar Raipur, Tahsil And District Raipur, Chhattisgarh.
4. Yogesh Valaryani S/o Ramesh Valaryani Caste Sindhi, R/o Shailendra Nagar, Raipur, Tahsil And District Raipur, Chhattisgarh.
5. Ravikant S/o K.R. Sahu Caste Teli, R/o Kushalpur, Adarsh Nagar, Raipur, Tahsil And District Raipur, Chhattisgarh
6. State of Chhattisgarh, through the Collector, Dhamtari, District Dhamtari, Chhattisgarh. -----**Respondents**

For Petitioner:
For the State/Respondent No. 6

Shri Vinod Kumar Sharma, Advocate.
Smt. Deepti Shukla, P.L.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J
Order On Board

20.02.2020

1. This Review Petition has been filed questioning the legality and propriety of the order dated 27.03.2019 passed by this Court in MCC No. 891/2017.
2. Learned counsel for the Petitioner submits that while passing the order impugned and while rejecting the application preferred under Order 44 Rule 1 read with Order 33 Rule 3 of the Code of Civil Procedure, 1908 (hereinafter referred to as the C.P.C.), the Court ought to have taken

note of sub-rule (2) of Order 44 of C.P.C. Having failed to do so, the order impugned suffers from its infirmity, therefore, deserves to be reviewed.

3. From perusal of the record, it appears that an application was made by the Applicant- Beni Ram seeking permission for filing an appeal, while questioning the judgment and decree dated 28.08.2017 passed by the Additional District Judge (F.T.C.) Dhamtari, as an indigent person. It appears that the said application has been rejected, as the same was made without disclosing the movable and immovable properties, as required under sub-rule (2) of Order 33 of C.P.C. As a consequence, the said petition was dismissed.
4. At this stage, the provisions prescribed under Rule 2 of Order 44 of C.P.C. is required to be examined, which reads as under:-

2. Grant of time for payment of Court-fee.--“Where an application is rejected under rule 1, the Court may, while rejecting the application, allow the applicant to pay the requisite Court-fee, within such time as may be fixed by the Court or extended by it from time to time; and upon such payment, the memorandum of appeal in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance.”

5. A bare perusal of the aforesaid provision, it is apparent that while rejecting the application under Order 44 Rule 1 of C.P.C., the time should have been granted to the Applicant as required under the aforesaid provision. It is, therefore, apparent that the said provision was skipped over while deciding the said petition i.e., M.C.C. No., 891/2017.
6. At this stage, Shri Sharma submits that the requisite Court-fee has already been paid and the receipt in this regard was submitted along with M.C.C. No. 64/2020.

7. Be that as it may, considering the facts and circumstances of the case, the order impugned is accordingly reviewed and the M.C.C. which was registered as M.C.C. No. 891/2017 is restored to its original number.
8. Registry is directed to return the original copy of receipt regarding payment of Court-fee annexed with the said M.C.C. (M.C.C. No. 64/2020) after obtaining the photocopy of the same from him. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
JUDGE

Vivek