

HIGH COURT OF CHHATTISGARH, BILASPUR

M.C.C No. 459 of 2019

1. Smt. Sadhna Jain W/o. Shri Pradeep Jain, Aged about 50 years, R/o. E.W.S. Gound Floor House, Block No. 14/2, Kosanagar Sasta Bhawan of Kosanagar Ward, Residential Project Bhilai, Tahsil and District Durg (C.G.)
2. Pradeep Jain S/o. Shri Panchamlal Jain, Aged about 57 years, R/o. E.W.S. Gound Floor House, Block No. 14/2, Kosanagar Sasta Bhawan of Kosanagar Ward, Residential Project Bhilai, Tahsil and District Durg (C.G.)

---- Applicants

Versus

Smt. Geeta Soni W/o. Shri Purushottam Soni, aged about 45 years, R/o. E.W.S. Gound Floor House, Block No. 14/2 and House No. 14/13, Kosanagar of all Kosanagar Ward, Sasta Bhawan Residential Project Bhilai, Tahsil and District Durg (C.G.)

---- Respondent

For the Applicants :- Mr. Roop Naik, Advocate
For the Respondent :- Mr. Anurag Jha and
Mr. Anmol Sharma Advocates

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Judgement on Board By
Manindra Mohan Shrivastava, J.

21.01.2020

Heard on prayer for grant of permission to sue as forma pauperis.

2. The appellant has filed an appeal against the judgment and decree passed by the trial Court by which not only a decree of eviction has been granted but the appellant's counter claim for grant of decree for specific performance of contract has also been dismissed.
3. Prayer for grant of permission to sue as forma pauperis has been made on the ground that during trial, the appellant was permitted to sue as an indigent person. It is submitted that in another case of an appeal filed by the appellant No.2 against the judgment and decree dismissing the suit for grant of compensation, this Court allowed the appellant No.2 to file appeal as indigent person vider order dated 09.07.2018 passed in MCC No. 164 of 2018. Further submission is that, though, earlier, the appellant had some funds, but now the appellants are bereft of any financial capacity to pay huge Court fees but not only in the matter of decree of eviction but also in respect of counter claim. It is submitted that total valuation of the appeal is Rs. 32,87,000/- for which the Court fee approximately Rs. 3,94,440/- is payable.
4. Referring to the provisions contained in Order 44 Rule 1,2 and 3, it is also argued that as the appellant was permitted to sue as forma pauperis during trial proceedings, he has filed an affidavit and there is no material to show that after passing of the judgment decree the appellant has ceased to be an indigent person. In support of his submission learned counsel for the appellant has placed reliance upon judgment in the case of

Sushil Thomas Abraham v. M/s. Skyline Build Thr. Its Partner & others in Civil Appeal No. 117 of 2019.

5. On the other hand, learned counsel for the respondent submits that though, during the pendency of the suit, an order was passed by the learned trial Court allowing the appellant to sue as forma pauperis, nevertheless, an issue was framed by the trial Court as to whether the appellant is an indigent person and at the conclusion of the trial, on the basis of the evidence collected during the trial, the learned trial Court has specifically recorded a finding that the appellant is not an indigent person. Next submission is that the appellants are not entitled to be granted permission to sue as indigent person, in view of overwhelming material on record and that the appellant, not only in his counter claim but also before this Court, has prayed for grant of decree of specific performance, meaning thereby, that he claims to be ready and willing to perform his part of contract i.e. having paid huge amount of Rs. 12,55,000/-, he has the capacity to pay balance amount of Rs. 15,45,000/- also. It is also submitted that in the report of the Revenue Officer, there is nothing to show that he is an indigent person and further that the documents have been placed on record to show that the appellant has filed various complaints under Section 138 of the Negotiation Instrument Act and has been issuing notice to various borrowers that he had advanced loans of lakhs of rupees at different point of time, therefore, it is argued, the appellant is not an indigent person.

- 6.. We have heard learned counsel for the parties and perused the record.
7. Respondent Smt. Geeta Soni had filed a suit seeking decree of eviction and rent against the appellant. The appellants in that suit, filed counter claim in which they pleaded that Smt. Geeta Soni had agreed to sell her house in favour of the appellant for a consideration of Rs. 28,02,000/- and according to the agreement, as pleaded, an advance amount of Rs. 12,55,000/- was already paid on different dates and that the appellants are ready and wiling to pay balance amount of Rs. 15,45,000/-. Though, during the pendency of the suit, the appellant was permitted to prosecute their suit as an indigent person, learned trial Court framed specific issue with regard to this aspect and recorded specific findings on the issue that the appellants are not an indigent person.
8. The respondent/ plaintiff has also placed on record various complaints and notices filed by appellant Pradeep Jain which shows that he has initiated proceedings on the ground that he had been advancing loan to different persons and two such cases in which he advanced loan of Rs. 2,00,000/- and in another case loan of Rs. 4,00,000/- has been placed on record.
9. True, it is that in another case, Pradeep Jain has been allowed to sue as forma pauperis mainly on the ground that before trial Court, he was allowed to sue as an indigent person, however, the facts and disclosers which have been made in this case, were not placed before this Court while deciding the application

in other MCC No. 164/ 2018. A party who not only claims to have paid huge amount of Rs. 12,55,000/- as an advance but also claims to be ready and willing to pay balance amount of Rs. 15,45,000/- cannot, by any stretch of imagination, be said to be an indigent person. Therefore, application for grant of permission to sue as an indigent person appears to be frivolous and is, therefore, dismissed. The appellant is granted a month's times to pay balance Court fees.

10. The appeal be listed for further orders after one month.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge