

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 13 of 2020**

- Shailendra Kumar Shrivastava, S/o Late Parmeshwar Prasad Shrivastava, Aged About 67 Years Resident Of M.D.D. 136, Phase-2, Kabir Nagar, Raipur, Chhattisgarh. **--- Appellant**

Versus

- Tikaram Kashyap S/o Late Bhaiyalal Kashyap, Aged About 65 Years R/o M.I.G. (S) -118, Phase -2, Kabir Nagar, Raipur, Chhattisgarh At Present House No. 103, MIG (G+1) Phase-2, Tiranga Chowk, Kabir Nagar, Raipur, District -Raipur, Chhattisgarh. **---- Respondent**

For Appellant	: Shri Vivek Kumar Agrawal, Advocate
For Respondent	: Shri Akash Pandey, Advocate

Hon'ble Shri Justice Sanjay S. Agrawal
Order on Board

19.02.2021

1. Challenge to this appeal preferred by the Plaintiff/Appellant is the order dated 10.01.2020 passed in Civil Suit No.11-A/2015, whereby the learned trial Court has rejected the application filed by him under Order 33 Rule 1 and 2 of C.P.C. seeking to sue as an indigent person.
2. According to learned counsel for the Appellant, the finding of the Court below holding that the Appellant is not an indigent person, and therefore, not entitled to sue as an indigent person, is apparently contrary to law. While inviting attention to his income certificate submitted by Naib Tahsildar, Raipur based upon the report of the concerned Patwari, it is contended that the annual income of the Appellant for the year 2016-2017 is Rs.50,000/- and in view of that, the Court below ought to have permitted him to sue as an indigent person.
3. On the other hand, learned counsel for the Respondent has supported the order impugned as passed by the trial Court.
4. I have heard learned counsel for the parties and perused the entire

papers annexed with this appeal, carefully.

5. From perusal of the order sheet dated 14.07.2017, it appears that a suit for specific performance of contract was instituted by the Appellant through his counsel and, thereafter on 18.08.2017, he moved an application under Order 33 Rule 1 and 2 of C.P.C. seeking permission of the Court to sue as an indigent person. According to him, he was a contingent employee, retired in year 2010 and, except the suit house at Kabirnagar, Raipur, no other properties (movable or immovable) are available with him. It is stated further in the said application that he used to earn Rs.6,000/- per month, while working as electrician, and therefore, he is unable to pay the requisite Court fee as required in the suit.
6. It is, however, to be noted that at the time of filing of the said application, the Appellant has failed to furnish the schedule with regard to his movable and immovable properties along with the plaint as required under Rule 2 of the said provision, though certain documents, like income certificate and the identity card was produced subsequently on 28.11.2017. Although the annual income of the Appellant as shown in the alleged income certificate is Rs.50,000/-, but a bare perusal of it would, however, show that it was certified by the Naib Tahsildar, Raipur based upon the report of concerned Patwari who prepared the same only on the basis of his instructions. That apart, the certificate so produced appears to be contrary to his own version as made in the said application, as his income appears to have been shown therein around Rs.72,000/- (Rs.6,000/- X 12), which he used to earn from his electrical job.

7. Besides, the identity card as submitted by him appears to be of much after filing of the suit, and therefore, no reliance could be placed upon it. Moreover, the nature of work as depicted from it, is contrary to his own application. Not only to this, it appears from his evidence that he is an electrician and not a labourer as shown in the said identity card. It, thus, appears that the alleged both the documents as furnished were not only much after the institution of the suit, but were shown even contrary to his own averments made in the said application coupled with the evidence led by him.
8. In view of that, it is apparent that all these documents have been produced in an ulterior motive in order to get the permission of the court somehow or the other to institute the suit for specific performance of contract as an indigent person. The Court below has, therefore, upon due consideration of the said application and the evidence led by the parties, rightly turned down the prayer of the Appellant and, I do not find any infirmity in the same. Accordingly, The appeal, being devoid of merit, is hereby dismissed.
9. Before parting with the matter, it would be just and appropriate to provide some time to the Appellant/Plaintiff to furnish requisite Court fees before the concerned trial Court and I accordingly grant him two months' time for the said purpose. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
JUDGE