

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 27 of 2021**

Mohd. Rafique Khan S/o Late Umardaraj Khan, Aged about 42 years R/o Khalepara, Gauri Nagar, W.No. 13, Rajnandgaon, Tehsil and District Rajnandgaon (C.G.)

---- Appellant

Versus

Asif Khan S/o Yusuf Khan, Aged about 39 years R/o Mamta Nagar, W.No. 18, Gali No. 06, Rajnandgaon, Tehsil and District Rajnandgaon (C.G.)

---- Respondent

For Appellant	:	Mr. Anoop Majumdar and Mr. Saket Pandey, Advocates
For Respondent	:	None.

Hon'ble Shri Justice Deepak Kumar Tiwari
JUDGMENT ON BOARD

09/11/2021

Heard on admission.

1. This miscellaneous appeal has been preferred under Order 43 Rule (na) read with Section 151 of the Code of Civil Procedure (henceforth 'the CPC') against the order dated 03/03/2021 passed in MJC No. 01/2021 passed by the Court of Additional District Judge (Fast Track Court), Rajnandgaon, whereby his application filed under Order 33 read with Section 151 of the CPC which was filed after the judgment and decree dated 16/12/2020 passed in Civil Suit No. 33-A/2015, has been dismissed holding that such application is not maintainable after adjudication of the matter.

2. Brief facts of the case are that the appellant had filed Civil Suit No. 33-A/2015 mentioning that the document dated 26/02/2015 is not an agreement for sale but a mortgage deed with the defendant from whom he took loan of Rs. 3,30,000/-. The defendant opposed the suit and pleaded that the document was an agreement to sale and not a mortgage deed. The trial Court framed four issues for adjudication of the matter and issue of Court fees and valuation of suit was decided as final issue. While deciding issue no. 3, it was held that the plaintiff/appellant has not valued the suit and insufficient Court fees has been affixed, however, other issues were decided in favour of the appellant/plaintiff. The trial Court has also directed that the decree will only be operative subject to payment of Court fees as determined.
3. After the judgment and decree passed in the aforesaid suit on 16/12/2020, the appellant/plaintiff preferred an application under Order 33 read with Section 151 of the CPC for allowing him to sue as indigent person. By the impugned order, his application was dismissed. It was held that the application had to be filed prior to filing of the civil suit and not afterwards.
4. Counsel for the appellant/plaintiff submits that the impugned order is illegal and not sustainable in the eyes of law. The appellant was an indigent person even before filing the civil suit. No stage has been prescribed for entertaining application under Order 33 Rule 1 & 2 of the CPC, therefore, the Lower Court is unjustified in not entertaining the application filed by the appellant. The appellant/plaintiff cannot be non-suited for not paying the Court fee despite there has been decree for

declaration of his rights recognized by the civil Court. The Court below ought to have exercised its inherent powers for deciding the financial status of the appellant for the purposes of depositing the Court fee. He further submits that the impugned order is without jurisdiction because none of the grounds as specified in order 33 Rule 5 of the CPC was available to reject the application. Hence, it is prayed that the impugned order may be set-aside and the learned Court below be directed to entertain and enquire upon the application submitted by the appellant under order 33 read with Section 151 of the CPC.

5. In the present case, seminal question is to be determined as to whether the appellant/plaintiff has right to file an application under Order 33 Rule 1 & 2 of the CPC after the decision of the suit and whether the learned Court below has committed any error which calls any interference.
6. I have heard counsel for the appellant and perused the impugned order.
7. Order 33 rule 1 of the CPC enables an indigent person to bring the suit in the manner prescribed under the said order. Order 33 rule 2 of the CPC specified the law that every application for permission to sue as an indigent person shall contain the particulars required in regard to plaints in suits; a schedule of any movable or immovable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for signing and verification of pleadings. Order 33 rule 5 enables the Court to reject an application for permission to sue as an indigent person: (a) Where it is not framed and presented in the manner prescribed by rules 2 & 3 and where

the application is in proper form and duly presented, after hearing the Court shall either allow or refuse to allow the application and where the application is granted, it shall be deemed for the plaintiff of the suit. Order 33 Rule 10 of the CPC specified that where the plaintiff succeeds in the suit, the Court shall calculate the amount of Court fees which would have been paid by the plaintiff if he had not been permitted to sue as an indigent person; such amount shall be recoverable by the State Government from any party ordered by the decree to pay the same and shall be a first charge on the subject matter of the suit.

8. So in view of the law framed under Order 33 of the CPC, if any person is an indigent person before presentation of any suit, he may file an application seeking permission to sue as an indigent person but in the present case, the appellant himself not chosen to file such an application and after passing of the judgment when the Court found the suit was under valued and the Court fees was not properly paid then he seeks remedy from the same Court without challenging the finding of the decree available to him under the law.
9. Accordingly, this Court is of the view that by holding that the application is not maintainable by the lower Court and dismissed the same, is proper and this Court does not find any error in the same.
10. Consequently, this appeal fails at motion stage and dismissed accordingly.
11. There shall be no order as to costs.

Sd/-
(Deepak Kumar Tiwari)
Judge