

HIGH COURT OF CHHATTISGARH AT BILASPUR

MCC No. 637 of 2019

Santosh Kumar S/o Motilal Aged About 48 Years Caste - Satnami, R/o - Chandani Chowk, Kohka, Post - Kohka, Supela, Bhilai Nagar, Tahsil and District - Durg Chhattisgarh. (Defendant No. 1)

---- Appellant(s)

Versus

- 1.** Sanjay Kumar Nayak S/o Late Ramnarayan Nayak, Aged About 38 Years R/o Shastri Nagar, Bhilai, Tahsil And District - Durg Chhattisgarh.
- 2.** Amit Kumar Pandey S/o Kamlashankar Pandey Aged About 36 Years R/o Fruit Mandi, Power House Bhilai, Tahsil And District - Durg Chhattisgarh.
- 3.** Baratu S/o Motilal Aged About 30 Years Caste - Satnami, R/o Chandani Chowk, Kohka Post - Kohka, Supela, Bhilai Nagar, Tahsil And District - Durg Chhattisgarh.
- 4.** Surendra S/o Motilal Aged About 25 Years Caste - Satnami, R/o Chandani Chowk, Kohka, Post - Kohka, Supela, Bhilai Nagar, Tahsil And District Durg Chhattisgarh.
- 5.** Satyendra Kumar S/o Late Panchram Aged About 22 Years Caste - Satnami, R/o Chandani Chowk, Kohka, Post - Kohka, Supela, Bhilai Nagar, Tahsil And District - Durg Chhattisgarh.
- 6.** Yugal Kishore S/o Late Panchram Aged About 18 Years Caste - Satnami, R/o Chandani Chowk, Kohka, Post - Kohka, Supela, Bhilai Nagar, Tahsil And District Durg Chhattisgarh.
- 7.** Motilal S/o Dev Singh Aged About 60 Years Caste - Satnami, R/o Chandani Chowk, Kohka, Post - Kohka Supela, Bhilai Nagar, Tahsil And District - Durg Chhattisgarh.
- 8.** State of Chhattisgarh (Formal Party) Through Collector, Durg, District Office Durg Chhattisgarh.

---Respondent(s)

For Appellant	:	Shri Y.C. Sharma, Sr. Advocate along with Ms. Poorva Tiwari, Advocate
For Respondent-Defendant	:	Shri Vipin Tiwari, Advocate.
For State	:	Shri Rajendra Tripathi, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Hon'ble Smt. Justice Rajani Dubey, JJ.

Order on Board

Per, P. Sam Koshy, Judge

26.10.2021

- 1.** The present MCC is a part of an Appeal under Order 44 Rule 1 CPC. The appellant has filed the MCC seeking permission for filing of the Appeal without payment of the Court fees.

2. The stand of the appellant in the application was that he does not have sufficient source of income with which he could have paid the court fees.
3. This court on an earlier occasion had ordered for an enquiry to be conducted by the State authorities. The matter was enquired into by the Tehsildar, Durg and a report was submitted by the Tehsildar on 14.10.2019. From the admitted factual matrix that was provided by the appellant to the Tehsildar, there is an admission on the part of the appellant that in the property that he has in his possession, there are nine shops operational and those shops have been given on rent and the appellant is earning a rental income per month at Rs.25,000/- from the said nine shops. Thus, from the aforesaid admitted factual matrix of the case, it goes to establish that the appellant has an income of more than Three Lakhs per annum only from the rent that he is getting from the nine shops.
4. Though the counsel for the appellant tried to canvass this fact that there are seven persons in the family and this income of Rs.25,000/- if distributed between seven persons then the appellant would not be left with sufficient source of income with which he could have deposited the court fees required for preferring the appeal.
5. Further, the counsel for the appellant also pointed out that at the time of marriage of the eldest daughter in the family there was a loan of about rupees Four Lakhs obtained and for which there was a monthly liability of around 9000/-. Thus, the appellant was only getting around Rs.16000/- net rental income which would bring the annual income of the appellant to less than Rs.2,00,000/-. Thus, the MCC should be allowed in favour of the appellant.
6. We have carefully considered the report of the Tehsildar and also the findings given in the said report. With the admitted factual matrix where

there is an admission of the appellant having a rental income of Rs.25000/- per month which would bring the annual rental income to Rs.3,00,000/-, we are of the firm view that the appellant has sufficient source of income for depositing the court fees in the process of challenging the impugned judgment and decree.

7. The MCC thus deserves to be and is accordingly rejected. The appellant is hereby granted four weeks time for depositing the requisite court fees enabling him to further pursue the First Appeal. On the failure of the appellant in depositing the requisite court fee within the time granted, the appeal would stand rejected automatically.

Sd/-
(P. Sam Koshy)
Judge

Sd/-
(Rajani Dubey)
Judge

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