CGHC010092512026

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 296 of 2026

1 - Sandeep Yadu S/o Nem Singh Aged About 22 Years Cast-Thethwar, Occupation - Labour, R/o Village - Baniya, Post - Gaurmati, Tah. - Sahaspur Lohara, Dist - Kabeerdham, Chhattisgarh. (Plaintiff)

2 - Smt. Maneesha W/o Jeewan Yadu Aged About 25 Years Cast - Thethwar, R/o Village - Jaitpuri, Tah- Kunda, Dist - Kabeerdham, Chhattisgarh.

... Petitioner(s)

versus

1 - Nemsingh Yadu S/o Ramcharan Yadu Aged About 47 Years R/o Ward No. 06, Yadavpara, Thankhamahariya, Tah - Thankhamahriya, Dist - Bemetara, Chhattisgarh.

2 - Mahendra Yadu S/o Late Gaukaran Yadu (Mother - Smt. Rajbati), Aged About 21 Years R/o Ward No.6, Yadavpara, Thankhamahariya, Tah - Thankhamahriya, Dist - Bemetara, Chhattisgarh.

3 - Smt. Khediya Bai W/o Nemsingh Aged About 43 Years R/o Village - Baniya, Post - Gaurmati, Tah - Sahaspur Lohara, Dist - Kabeerdham, Chhattisgarh.

4 - State Of Chhattisgarh Through - Collector, Dist - Bemetara, Chhattisgarh.

... Respondent(s)
(Defendants)

(Cause title is taken from the CIS)

For Petitioners	:	Shri Viprasen Agrawal, Advocate
For Respondent/ State	:	Shri Sidhant Tiwari, PL
For Respondents-1 and 2	:	Shri VA Goverdhan, Advocate

Hon'ble Shri Justice Ravindra Kumar Agrawal

Order on Board

30.10.2026

1. Heard.

2. Present is a writ petition filed by the petitioner under Article 227 of the Constitution of India against the order dated 11.02.2026 passed by the learned Third Civil Judge, Senior Class, District-Bemetara, in Civil suit No.4A/2018, whereby the application filed by the petitioners under Section 35 of the Court Fees Act for exemption from payment of court fees has been rejected.

3. Learned counsel for the petitioners would submit that petitioners are plaintiffs before the learned trial Court, who were prosecuting a suit for declaration of title, partition and possession over the suit property, a house situated at village-Palipar, Tahsil-Sahaspur Lahara and agriculture land at village-Kurda, Tahsil-Thankhamariya. He would further submit that earlier also, plaintiffs filed an application under Section 35 of the Court Fees Act, which was rejected by the learned trial Court on 14.05.2019. Plaintiffs challenged that order before this court in WP227 No.659 of 2019, and it was dismissed vide order dated 18.10.2024. However, liberty was reserved in favour of the plaintiffs to file fresh application before the concerned trial Court along with necessary documents and in turn, the learned trial Court shall consider and decide the same in accordance with law. Thereafter, plaintiffs have filed the application afresh, supported by income certificate and other relevant documents, showing that individual income of the plaintiffs is not more than Rs.25,000/- per year and they come within the purview of notification issued by the State Government on 01.04.1983 which was amended by another notification dated 20.06.2008, by which the yearly income of the

person concerned has been enhanced up to Rs.25,000/- per year. He would further submit that women have been completely exempted from payment of Court fee under said notification and in that view of the matter, if income of plaintiff-2 has been exempted, the total income of plaintiff-1 is Rs.25,000/- per year which suffice the requirement of the notification issued by the State Government for exemption of the court fees. On due process of law, the plaintiff obtained income certificate which has been produced before the learned trial Court to show his financial capacity. Yet, the learned trial Court rejected the application by taking into consideration the income of both the plaintiffs (1 and 2) individually and holding that yearly income of the plaintiffs is Rs.50,000/- per year. He would further submit that learned trial Court has also observed that provision of Order 33, Rule 2 of the CPC has not been followed by the plaintiffs and since the yearly income of the plaintiffs is Rs.50,000/-, which is beyond the permissible limit under the said notification issued by the State government, therefore, rejected the application, whereas, income of plaintiff-1 is only should be considered as the income of the plaintiff-2, being a lady has been exempted under the notification. Therefore, the impugned order suffers from perversity and jurisdictional error, which is liable to be set aside and the learned trial court may be directed to exempt the petitioners/plaintiffs from payment of court fees, register the Civil Suit and to proceed in accordance with law.

4. On the other hand, learned counsel for respondents-1 and 2 opposes the submissions made by learned counsel for the petitioners

and would submit that on earlier occasion also, application filed by the plaintiffs for exemption of court fees has been rejected by the learned trial Court observing that the plaintiffs are having a *pakka* house and they have not demonstrated their yearly income by leading cogent and documentary evidence, and rejected/dismissed the application filed by the plaintiffs before the learned trial Court. The rejection of their application has been affirmed by this Court in the earlier round of litigation in WP227 659 of 2019 also, though liberty was granted in their favour to file application afresh. He would further submit that plaintiffs are having sufficient means to earn and having *pakka* house at village and plaintiff-1 is employed as car driver with a private person and plaintiff-2 is earning from tailoring work; therefore, they are having sufficient means to pay the requisite court fees in the suit. It is also submitted that though there is exemption for plaintiff-2 under the amended notification dated 20.06.2008, he could not deny but permissible limit is only up to Rs.25,000/- and if their income is more than that, they would not get any exemption in payment of court fees. Therefore, learned trial court has rightly rejected the application filed by the petitioners, which is not to be interfered with.

5. Learned counsel appearing for the State also objected the prayer made by learned counsel for the petitioners and would submit that in view of the facts and circumstances of the case, property involved in the petition and the financial capacity of the plaintiffs, petitioners are not entitled for any exemption from payment of court fees.

6. Heard learned counsel for the parties and perused the documents annexed with the petition.

7. This is the second round of litigation by the petitioners/plaintiffs, where their application filed under Section 35 of the Court Fees Act has been rejected. From perusal of order dated 18.10.2024 passed in WP227 No.659 of 2019 it transpires that earlier also, plaintiffs have filed application under Section 35 of the Court Fees Act for exemption from payment of court fees which was rejected vide order dated 14.05.2019 by the trial Court, and it was challenged by the plaintiffs in the said writ petition. While considering the said writ petition, the coordinate Bench of this court has observed that only income certificate of plaintiff-1 has been filed and no income certificate of plaintiff-2 has been filed by them. Hence, by dismissing the said writ petition, plaintiffs were directed to file fresh application before the concerned trial Court along with necessary documents which shall be considered and decided in accordance with law. Thereafter, the plaintiffs have filed their second application for exemption from payment of court fees, which has been annexed with the present petition as Annexure-P4. Though in the application, plaintiffs have averred that plaintiff-1 is landless person, who is dependent upon agriculture labour and physically very weak and plaintiff-2 is a home maker, she also landless person, having minor children. They are not having sufficient means to earn and their yearly income is not more than Rs.20-25,000/-, therefore, they are unable to pay the requisite court fees in the suit. They are claiming partition and separate possession over the

suit house, and in absence of the requisite Court fees, they would be deprived of from the property right, since their yearly income is not more than Rs.25,000/-, they are entitled for exemption from payment of court fees. Along with the application, the petitioners/plaintiffs have filed their income certificate issued by the Tahsildar concerned.

8. Yearly income of the plaintiffs has been disputed by respondents-1 and 2 by saying that they are having sufficient means to earn more than Rs.25,000/- per year, having *pakka* house and other assets, and plaintiff-1 is an employee as Car Driver with a private person. Plaintiff-2 is also earning from trailing profession.

9. From perusal of order impugned, it transpires that the learned trial Court has passed the order considering the documents produced by the plaintiffs and after hearing them. However, there is no observation that any report was obtained from the concerned Revenue Officer, or any other competent officer with respect to individual yearly income of the plaintiffs, or with respect to income certificate produced by them.

10. Considering the rival submissions of the parties, the learned trial Court should have asked a report from the competent authority with respect to the yearly income of the plaintiffs as to whether they are capable to earn more than Rs.25,000/- per year, or not, and by observing that in the income certificate of the plaintiffs the total income comes towards Rs.50,000/- per year. This Court has also gone through the order dated 18.10.2024 passed by the coordinate Bench of this court in earlier

round of litigation, in which the notification dated 01.04.1983 issued by the State Government has been observed in paragraph-5. According to said notification, 'women' are exempted from payment of court fees, whose annual income is not more than Rs.6,000/- per year and by the subsequent notification dated 20.06.2008, the said amount of Rs.6,000/- has been enhanced up to Rs.25,000/- per year. Meaning thereby, the 'women', whose annual income is not more than Rs.25,000/-, shall be exempted from payment of court fees.

11. In the present case, plaintiff-2 is a woman, whose annual income asper her income certificate, is not more than Rs.25,000/-, thus, she is entitled for exemption from payment of Court fees subject to any other verification report obtained by the Court. Since the documents and financial capacity of the plaintiffs have not been examined by the learned trial Court by calling any report from any competent officer, this court is inclined to interfere in the impugned order passed by the trial Court by observing that learned trial Court should have called a report from the competent revenue authority with respect to yearly income of the plaintiffs, and then only, proceed further to decide the application filed by the plaintiffs under Section 35 of the Court Fees Act in accordance with law.

12. Accordingly, the impugned order dated 11.02.2026 is set aside and the matter is remitted back to the learned trial Court with the observation that it shall call a report from the competent authority with respect to

yearly income of the plaintiffs and then only proceed to decide the application filed under Section 35 of the Court Fees Act in accordance with law on its own merits.

13. With the aforesaid observation, present **writ petition is allowed**.

Sd/-
(Ravindra Kumar Agrawal)
JUDGE

padma