

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

FA No. 55 of 2011

Dena Bank **Versus** Jayant Triyumbuk Daate & Ors.

FA 61/2011, FA 8/2011, FA 9/2011, FA 10/2011, FA 11/2011, FA 12/2011, FA 13/2011, FA 14/2011, FA 15/2011, FA 16/2011, FA 20/2011, FA 22/2011, FA 29/2011, FA 48/2011, FA 47/2011, FA 45/2011, FA 46/2011, FA 44/2011, FA 42/2011, FA 40/2011, FA 41/2011, FA 39/2011, FA 38/2011, FA 37/2011, FA 36/2011, FA 35/2011, FA 125/2011, FA 126/2011, FA 127/2011, FA 128/2011, FA 121/2011, FA 122/2011, FA 123/2011, FA 124/2011, FA 134/2011, FA 129/2011, FA 130/2011, FA 131/2011, FA 132/2011, FA 118/2011, FA 119/2011, FA 120/2011, FA 133/2011, FA 130/2010, FA 135/2010, FA 140/2010, FA 138/2010, FA 150/2010, FA 151/2010, FA 141/2011, FA 223/2011, FA 43/2011, FA 117/2013, FA 140/2011, FA 138/2011, FA 137/2011, FA 135/2011, FA 139/2011, FA 60/2011, FA 59/2011, FA 57/2011, FA 58/2011, FA 56/2011

31/08/2017	<p>Shri Vinod Deshmukh, counsel for Dena Bank in all the appeals.</p> <p>Shri Ramakant Mishra and Shri S. K. Dewangan, counsels are appearing for Madan Mohan Dwivedi in some appeals. They are directed and they accept notice for Shri Madan Mohan Dwivedi in other appeals also.</p> <p>Shri Anurag Verma, counsel is appearing for Shri Sharad Govardhan in FA No.57/2011. He is directed and he accepts notice for Shri Sharad Govardhan in all the appeals.</p> <p>Shri Neeraj Choubey, counsel has agreed to appear for Shri B. L. Maheshwari in all the appeals.</p> <p>Shri Jitendra Pali has appeared in all the appeals preferred by Shri S. D. Meshram. He accepts notice for Shri S. D. Meshram in all other appeals where he is arrayed as respondent.</p> <p>Shri R. N. Jha, counsel would appear for appellants in FA No.130/2010, FA No.135/2010 and FA No.150/2011.</p>

Shri P.K.C. Tiwari, Senior counsel with Shri Shashi Bhushan Tiwari and Shri Kripesh G. Kela would appear for the appellant in FA No.151/2010.

Shri Anup Majumdar, counsel for the respondent No.1 in FA No.59/2011.

Shri Gagan Tiwari, counsel for the respondent No.2 in FA No.41/2011, 140/2010, 43/2010.

Shri C. K. Sahu, counsel for the account holder in FA No.8/2011, 9/2011, 13/2011, 14/2011, 15/2011, 29/2011, 16/2011, 46/2011, 44/2011, 41/2011, 38/2011, 36/2011, 35/2011, 130/2010, 135/2010 and 43/2011.

Heard.

The present batch of 64 first appeals are arising out of same nature of civil suits for recovery of amount preferred by Dena Bank before the trial Court. Out of 64 appeals, 8 appeals have been preferred by Dena Bank challenging dismissal of its suit, whereas defendant S. D. Meshram has preferred 27 appeals and defendant Madan Mohan Dwivedi has preferred 25 appeals. Several account holders namely, Mukesh Agrawal, R. N. Shrivastava, Shivram Das Khandelwal and Balak Ram Sinha have also preferred appeals challenging the decree passed against them.

In first appeals i.e. FA Nos.125, 126, 127, 128, 121, 122, 123, 124, 134, 129, 130, 131, 132, 118, 119, 120, 133, 141, 223, 140, 138, 137, 135, 139 of 2011 and 117/2013 preferred by Madan Mohan Dwivedi, the appellant has preferred application under Section 35 of the Court Fees Act for grant of exemption from payment of court fee by virtue of the notification issued by the State

Government bearing No.F9-83-B-21 dated 01.04.1983.

Shri Ramakant Mishra, learned counsel appearing for Madan Mohan Dwivedi in all the appeals, would submit that although the notification refers to exemption from filing court fees on a plaint but the appeal being continuation of suit, if the defendant is aggrieved by the decree passed against him, the memo of appeal should be treated like a plaint and the benefit of the State Government's notification should accrue to the defendant also in a first appeal under Section 96 of the CPC.

A similar argument was raised and approved by the Single Bench in the matter of **M/s Jagdambe Niwad Co., vs Punjab National Bank**, reported in AIR 92 MP 35, however, by subsequent Division Bench decision rendered in the matter of **Chandulal Ghasiram Baradwar and another vs. Central Bank of India and another**, reported in 1992 MPLJ 381, it has been held that the benefit of exemption, by virtue of notification issued by the State Government under Section 35 of the Court Fees Act, is not applicable in appeals.

Similarly, in the matter of **Mohammad Mahibulla and another vs Seth Chaman Lal (dead) by L.Rs. and others**, reported in AIR 1993 SC 1241, the trial Court allowed exemption to the plaintiff Wakf Board, whose suit was eventually dismissed and the plaintiff claimed such exemption at the appellate stage also, which was rejected and the Supreme Court affirmed the said refusal to grant exemption from payment of court fee before the Appellate Court, however, the Supreme Court allowed time to pay the requisite court fee.

In view of the settled legal position, prayer made by the appellant Madan Mohan Dwivedi for exemption from payment of court fees deserves to be and is hereby rejected in FA Nos.125, 127, 128, 122, 123, 124, 134, 129, 132, 118, 119, 133, 223, 138, 137, 135 and 139 of 2011.

In all the above appeals preferred by Madan Mohan Dwivedi, he is allowed one month time to pay the requisite court fee, failing which FA Nos.125, 127, 128, 122, 123, 124, 134, 129, 132, 118, 119, 133, 223, 138, 137, 135 and 139 of 2011 shall stand dismissed without further reference to the Bench.

FA Nos.8/2011, 9/2011, 10/2011, 11/2011, 12/2011, 13/2011, 14/2011, 15/2011, 16/2011, 20/2011, 29/2011, 48/2011, 47/2011, 45/2011, 46/2011, 44/2011, 42/2011, 40/2011, 41/2011, 39/2011, 38/2011, 37/2011, 36/2011, 35/2011, 140/2010, 138/2010 and 43/2011 have been preferred by another judgment debtor, who also happens to be the employee of the plaintiff Bank. In these appeals, Shri S. D. Meshram has paid court fee by calculating his 1/7th share liability in the impugned decree. On perusal of the decree, it does not appear that the trial Court has apportioned or divided the liability on each of the defendant in equal share. On the contrary, the decree is joint and several, therefore, the liability to pay the entire decretal amount has been fastened jointly as well as severally on all the defendants leaving the choice to the plaintiff/decreed holder to execute the decree against one or the other or against all the judgment debtors. Therefore, Shri S. D. Meshram cannot apportion his 1/7th liability of his own contrary to the decree. The appellant Shri S. D. Meshram is therefore required to pay full ad valorem court

fee on the entire decretal amount.

Let Shri S. D. Meshram make good the deficit court fee in the appeals preferred by him within a period of one month, failing which FA Nos.8/2011, 9/2011, 10/2011, 11/2011, 12/2011, 13/2011, 14/2011, 15/2011, 16/2011, 20/2011, 29/2011, 48/2011, 47/2011, 45/2011, 46/2011, 44/2011, 42/2011, 40/2011, 41/2011, 39/2011, 38/2011, 37/2011, 36/2011, 35/2011, 140/2010, 138/2010 and 43/2011 shall stand dismissed without reference to the Bench.

FA No.130/2010

In this appeal, proper court fee has been paid by the appellant Mukesh Agrawal. This appeal has already been admitted for hearing. In this appeal, respondent No.1 Dena Bank is represented by Shri Vinod Deshmukh, respondent No.2 Madan Mohan Dwivedi is represented by Shri Ramakant Mishra, respondent No.3 Sharad Govardhan is represented by Shri Anurag Verma, whereas respondent No.4 B. L. Maheshwari is represented by Shri Neeraj Choubey. Shri Jitendra Pali, learned counsel would accept notice for respondent No.5 S. D. Meshram. Office report indicates that notices have been served on other respondents also. In addition, the respondent No.3 Sharad Govardhan and respondent No.6 Shiv Kumar Pandey have been served by publication also.

I. A. No.3, application for taking the copy of newspaper publication on record, is allowed. No one appears for other respondents.

This appeal **shall be heard finally at the motion stage** on

the next date of hearing.

FA No.135/2010

In this appeal preferred by account holders Shri R. N. Shrivastava, all the parties are represented except respondent No.6 Shiv Kumar Pandey and respondent No.7 Smt. Chheda Bai. Notice has already been served upon respondent No.7 Chheda Bai, therefore, now only the respondent No.6 Shiv Kumar Pandey remains to be served.

I.A. No.1, application under Order 5 Rule 17 & 19 of CPC and **I.A. No.2**, application under Order 5 Rule 17 & 20 (1) [1-A] of CPC are considered and allowed.

Let process fee be paid for service upon the respondent No.6 Shiv Kumar Pandey only within a week. Notice be handed over to the appellant for publication in Daily Hindi Nav Bharat Newspaper in its edition, which has circulation in Ambagarh Chowki, District Rajnandgaon area.

I. A. No.4, application under Order 1 Rule 10 CPC has been preferred to delete the name of Smt. Hemlata Shrivastava from the cause title, as other legal heirs of original appellant R. N. Shrivastava are already on record.

On due consideration, the application is allowed.

The appellant shall delete the name of Smt. Hemlata Shrivastava from the cause title within a week, failing which the appeal shall stand dismissed automatically without further reference

to the Bench.

FA No.150/2010

In this appeal preferred by account holder Shivram Das Khandelwal, all the respondents, except respondent No.6 Shiv Kumar Pandey and respondent No.7 Smt. Chheda Bai, are represented. Even though, the appellant has not made any prayer for substituted service by publication, in the interest of justice, we direct the appellant to pay process fee within a week for service of notice on respondent Nos.6 and 7 by publication.

On process fee being paid, notice be handed over to the appellant for publication in the Daily Hindi Nav Bharat Newspaper in its edition, having circulation in Ambagarh Chowki, District Rajnandgaon area.

FA No.151/2010

In this appeal, two of the defendants have not been joined on the ground that there is no decree against them by the trial Court, therefore, they are not necessary parties in this appeal.

The issue shall be considered at the time of final hearing.

Appeals preferred by Dena Bank

In the appeals preferred by Dena Bank, only respondent No.6 Shiv Kumar Pandey and respondent No.7 Smt. Chheda Bai are not represented. These first appeals i.e. FA Nos.55, 61, 22, 60, 59, 57, 58 & 56 of 2011 are barred by limitation.

Considering the fact that the appeals preferred by account holders Mukesh Agrawal, R. N. Shrivastava, Shivram Das Khandelwal and Balakram Sinha have already been admitted for hearing and the issues involved in all the appeals are similar, the delay in filing the appeals preferred by Dena Bank is condoned. In all the appeals, service by ordinary mode or registered mode is not happening on respondent No.6 Shiv Kumar Pandey and respondent No.7 Smt. Chheda Bai, therefore, the appellant Dena Bank is permitted to serve the said respondents by publication.

In FA Nos.55, 57 & 58 of 2011, newspaper publication has already been issued for service on the above respondents, therefore, notice to the said respondents be issued by publication only in FA Nos.22, 56, 59, 60 & 61 of 2011. Dena Bank is permitted to pay one consolidated process fee for FA Nos.22, 56, 59, 60 & 61 of 2011 by paying the same in FA No.22/2011. Even though, one set of process fee will be paid by Dena Bank, the notice shall refer to all other appeals number preferred by Dena Bank i.e. FA Nos.22, 56, 59, 60 & 61 of 2011.

Let the notice be published in the Daily Hindi Nav Bharat Newspaper, having circulation in Ambagarh Chowki, District Rajnandgaon area.

The appeals preferred by Shri S. D. Meshram and Shri Madan Mohan Dwivedi are barred by limitation, however, since we have directed these appellants to make good the deficit court fee or to pay the required court fee within one month, if the court fee is paid by them during the stipulated time, the appeals are held to be duly constituted. For the facility of expediting the hearing of the

appeals, even though proper court fee has not been paid in these appeals, we allow the prayer for condonation of delay in the appeals preferred by Shri S. D. Meshram and Shri Madan Mohan Dwivedi as we have done in the appeals preferred by Dena Bank.

In the meanwhile, the appellants S. D. Meshram and Madan Mohan Dwivedi are permitted to pay one consolidated process fee in one of their respective cases namely FA No.8/2011 filed by Shri S. D. Meshram and FA No.125/2011 filed by Shri Madan Mohan Dwivedi for service on respondent No.6 Shiv Kumar Pandey and respondent No.7 Smt. Chheda Bai. Even though, one set of process fee will be paid, the notice shall refer to all other appeals number preferred by Shri S. D. Meshram and Shri Madan Mohan Dwivedi respectively. The notice shall be handed over to the appellant for its publication in the Daily Hindi Nav Bharat Newspaper, having circulation in Ambagarh Chowki, District Rajnandgaon area.

List all the appeals for analogous hearing and for final disposal at motion stage, if possible, on 06.10.2017.

FA No.55/2011 shall be the lead case in this batch of appeals.

Sd/-
Judge
Prashant Kumar Mishra

Sd/-
Judge
Arvind Singh Chandel

Nirala