

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****W.P.(S) No. 1261 of 2010**

Hitendra Borkar S/o Manishankar Borkar, R/o Village Charama,
Bhatapara, Tahsil Charama, Distt. Kanker North Bastar (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh Through Secretary, Deptt. of Public Health and Family Welfare, D.K.S. Bhawan, Raipur, Chhattisgarh.
2. Director State Health Resource Center, First Floor Health Training Center Campus, Kalibadi, Raipur (C.G.)

---- Respondents

For Petitioner	:	Smt. Renu Kocher, Advocate
For Respondent/State	:	Shri B. Gopa Kumar, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****28/07/2015**

On perusal of the record would show that the petitioner for the same cause of action on an earlier occasion had filed a petition that was registered as W.P.(S) 6308/09 which was dismissed by this Court holding it to be devoid of merit on 04.11.2009.

2. Now, by way of the present writ petition, the petitioner has again challenged the same cause of action with slight modification in the writ petition and the grounds raised therein.

3. It is settled position of law that a litigant does not have a right to approach the Court time and again for the same cause of action by only changing grounds each time. All possible grounds ought to have been raised or challenged at the first instance. The litigant not doing so would not be permitted to reagitate the same cause of action repeatedly by only changing grounds each time. The issue which has been challenged once and which stands decided should not be allowed to reopen and reagitate only on the ground that the petitioner at the first instance could not take or raise certain grounds which he has now done in the subsequent writ petition. If such a system and principle is to be permitted then there will be no end to litigation and the judicial pronouncement passed earlier would have no binding effect and it is precisely for this reason the principle of res judicata was adopted and is applied.

4. The Supreme Court on the said issue of res judicata, in the case of State of Karnataka and another v. All India Manufacturers Organisation and others reported in (2006) 4 SCC 683, has held as under:

“Res judicata is a doctrine based on the larger public interest and is founded on two grounds: one being the maxim *nemo debet bis vexari pro una et eadem causa* (No one ought to be twice vexed for one and the same cause) and second public policy that there ought to be an end to the same litigation. Section 11 CPC is not the foundation of the principle of res judicata, but merely statutory recognition thereof and hence, the section is not to be considered exhaustive of the general principle of law. The main purpose of the doctrine is that once a matter has been determined in a former proceeding, it should not be open to parties to reagitate the matter again and again. Section 11 CPC recognises this principle and forbids a court from trying any suit or issue, which is res judicata, recognising both “cause of action estoppel” and “issue estoppel”.

5. Similar view has also been taken by the Supreme Court in the case of Escorts Farms Ltd. Previously known as M/S Escorts Farms (Ramgarh) Ltd. v. Commissioner, Kumaon Division, Nainital, U.P. and others reported in (2004) 4 SCC 281 wherein also the Supreme Court while dealing with the issue of res judicata has held as under:

“Res judicata is a plea available in civil proceedings in accordance with Section 11 CPC. It is a doctrine applied to give finality to “lis” in original or appellate proceedings. The doctrine in substance means that an issue or a point decided and attaining finality should not be allowed to be reopened and reagitated twice over. The literal meaning of res is “everything that may form an object of rights and includes an object, subject-matter or status” and res judicata literally means: “a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment”.

6. In view of the authoritative pronouncements of the apex Court in the decisions cited above, this Court is of the opinion that the present writ petition is not maintainable on account of the fact that the issue involved in the present writ petition already stands agitated and decided in Writ Petition (S) No. 6308 of 2009 which was dismissed vide order dated 04.11.2009. Only with a change of ground, a subsequent writ petition seeking for the same relief is not maintainable.

7. Accordingly, the present Writ Petition being devoid of merit stands dismissed.

Sd/-
(P. Sam Koshy)
JUDGE