

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 399 of 2015

1. Narendra Kumar Chandrakar S/o Late Kedarnath Chandrakar, aged about 55 years, R/o Shivaji Nagar, Kohka, Bhilai, Tahsil, Civil & Revenue District Durg, (Chhattisgarh)

---- Petitioner

Versus

1. Kaluram Jain S/o Late Trilokchand Jain, aged about 74 years, R/o Mahavir Colony, Durg, Tahsil, Civil & Revenue District Durg, (Chhattisgarh)
2. Dinesh Jain S/o Late Parasmal Jain, aged about 46 years, R/o Mahavir Colony, Durg, Tahsil, Civil & Revenue District Durg, (Chhattisgarh)
3. The State of Chhattisgarh, Through: the Collector, Durg, (Chhattisgarh)

---- Respondents

For Petitioner – Mr. P.P.Sahu, Advocate.

For Respondents 1 and 2 – Ms. Prachi Agrawal, Advocate under the authority of Mr. B.P.Sharma, Advocate.

For Respondent No.3. – Mr. Sumit Jhanwar, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

11/12/2015

1. Heard on admission.
2. As per facts mentioned in the instant WP(227) that a Civil Suit No.93A/14 (Kaluram Jain and another Vs. Narendra Kumar Chandrakar and another) is pending before the First Additional District & Sessions Judge, Balod, District Balod, C.G. In the said civil suit plaintiffs/respondents 1 and 2 have closed their evidence and thereafter, the defendant No.1/petitioner examined one witness to support him. Thereafter, the plaintiffs/respondents 1 and 2 filed an application under Order 18 Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (in brevity 'the Code') for examination of evidence of Manager/staff, Bank of Baroda, Branch Durg, C.G. to prove the pass-book already filed as document; for the same there was oral objection, no any reply for the same had been filed. The Court below held that though the

plaintiffs' evidence is closed, but for the reasons mentioned, the application was allowed and the Manager/employee of the concerned Bank was called on payment of due process to adduce evidence on behalf of the plaintiffs.

3. It is submitted that though the discretion lies with the court, but the said discretion can be applicable for reasonable cause. The Court without there being any reasonable cause allowed the application; and during pendency of the instant WP(227), the said witness was examined by the Court below. It is submitted that the order passed by the Court below is illegal and improper. If the petition is allowed then the permission to record evidence would be held rejected and in consequence, the evidence already recorded during pendency of the instant WP(227) would not be read as evidence.

4. On behalf of the petitioner, it is submitted that as the order of the Court below is improper and illegal, the petition may be admitted for consideration and after due hearing, the same may be allowed and the relief as prayed may be given.

5. For the purposes of appreciation of submission and argument, record of the instant WP(227) are perused.

6. From the perusal of the record, petition and the documents advanced in this behalf, it emerges that the evidence of the plaintiffs were closed. Thereafter, a witness of the defendant namely Lata Chandrakar was examined and cross-examined and the thereafter, the said application filed by the plaintiffs, for which no any written response had been filed on behalf of the defendant No.1/petitioner, was considered and the Court below allowed the same holding the reasons sufficient mentioned for an opportunity to examine the witness from the Bank of Baroda Branch Durg to prove the pass book already presented in the matter. Thereafter, as submitted, during pendency of the instant WP(227) the said employee of Bank of Baroda Branch Durg was already examined.

7. Till date, the petitioner is having opportunity to adduce his evidence in rebuttal. The prayer for leave to examine the witness after statements of the plaintiffs were over which is for to prove the pass book, it is not the matter that the said witness was examine to fill up lacuna. On the other hand, after examination of the said employee, the fact was duly submitted in the trial subject to the cross-examination by the defendant No.1/petitioner. Furthermore, as the defendants are having opportunity to adduce evidence and looking to the nature and facts of the evidence, it would otherwise help the trial Court to adjudicate the matter in toto.

8. On due consideration, the instant WP(227) being devoid of merit, is not liable for admission. Consequently, the instant WP(227) is hereby dismissed as not maintainable in the motion stage itself.

9. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE