

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Art.227) No.686 of 2015**

- Sukhdev S/o Jhagru, Aged About 42 Years Caste Uraon, R/o Village Maheshpur, Tahsil Patthalgaon, District- Jashpur, (Chhattisgarh)(Defendant No.2)

---- **Petitioner****1. Versus**

1. Ram S/o Natho, Aged About 22 Years,
2. Laxman S/o Natho, Aged About 22 Years,
3. Mu. Dasmati Wd/o Natho, Aged About 50 Years,

All by Caste Mahkul, R/o Village Khutapani, Tahsil Patthalgaon, District Jashpur, (Chhattisgarh).....(Plaintiffs)

4. Bukechandra S/o Natho, Aged About 38 Years Caste Mahkul, R/o Village Khutapani, Tahsil Patthalgaon, District Jashpur, (Chhattisgarh).....(Defendant No.1)
5. State Of Chhattisgarh Through Collector, District Jashpur, (Chhattisgarh)(Defendant No.2)

---- **Respondents**

Shri HB Agrawal, Sr. Advocate with Shri JK Saxena, counsel for the petitioner.

Shri Hemant Gupta, counsel for respondents 1 to 3.

Shri Aditya Sharma, Panel Lawyer for the State/respondent No.5.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order**22.12.2015**

Heard.

2. Brief facts in the instant petition is that in a Civil Suit No.13A/14 (Ram & Ors. vs. Bukechandra & Ors.) pending before Additional District Judge Kunkuri Distt. Jashpur, the Court below vide order dated 22.7.15 closed the opportunity of the petitioner/defendant No.2 to file written statement on the ground that prescribed period of 90 days has already been completed. The petitioner has filed the instant petition challenging the said order and submitted that the order passed by the Court below is

bad in law. The trial Court ought to have given opportunity to file written statement instead it had closed the opportunity and on the other hand fixed the matter for hearing on reply and on application under order 39 and Rule 1 & 2 of the Code of Civil Procedure, 1908 (for short 'the Code').

3. It is prayed on behalf of the petitioner that the written statement is ready and he can file the same and he is not intend to keep the matter pending. The Court may grant opportunity to file written statement hence it is prayed that the petition may be allowed and the court below be directed to permit the petitioner to file his written statement along with reply to the application under Order 39 Rule 1 & 2 of the Code.

4. On behalf of the respondent present before the court, no any written reply has been filed to the petition.

5. Heard counsel for the parties.

6. Counsel for the petitioner duly supported the ground taken in the petition and submitted that he may be given opportunity to file his written statement. Learned counsel placed reliance on **(2005) 4 SCC 480 Kailash vs. Nanhku and Others** wherein three Judges Bench of Hon. Apex Court held that provisions under Order 8 Rule 1 of the CPC and its proviso are not mandatory and in appropriate matter the Court can grant further time to file written statement.

7. Per contra, learned counsel for the respondents 1 to 3 opposed the petition and submitted that the petitioner failed to demonstrate that there was enough reason for praying of more time. Hence, he prayed that the petition may be dismissed and the order passed by the court below be affirmed.

8. For the purpose of appreciation on the arguments advanced by the parties present, the petition and the order dated 22.7.15 are perused.

9. On due consideration, it apparent from the impugned order dated 22.7.15 that the court below granted time to defendant No.2 for his reply to the interim application under Order 39 Rule 1 & 2 of the CPC and also arguments for the same. So far as opportunity for filing written statement are concerned, the court below held that after the 90 days of prescribed period, written statement is not filed hence, opportunity is closed. The order cannot be held as speaking order. Even otherwise, if the court granting time to file written statement of the temporary injunction application in the absence of any pleadings the reply would have been held as without any foundation. As per the case law cited the proviso for time limit under order 8 Rule 1 of the code is not mandatory rather directive and for showing sufficient cause opportunity may be awarded beyond the time so fixed in the proviso.

10. On due consideration this Court is of the view that reasonable opportunity is to be given to the petitioner/defendant No.2 as per the facts and the case law cited. Consequently the instant petition is hereby allowed. The petitioners are directed to submit a written statement along with a cost of Rs.400/- payable to the plaintiff before the court below within 15 days from the fixed date to hearing before the Court below. The Court below is directed to take written statement and proceed further in the matter. The petitioner may file certified copy of the order before the Court below for compliance.

11. Registry is directed to send a copy of this order to the Court below through usual and fax mode for compliance.

12. The petition is allowed. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE

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