

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 1008 of 2015**

Dharam Prakash Saraf S/O Late Shri Khatanand Saraf @ K. Anand Saraf Aged About 57 Years R/O Qr. No. E- 22, 15 Block S.E.C.L. Colony Korba Tah. & District Korba (Chhattisgarh).....(Plaintiff)

---- Petitioner

Versus

Satya Prakash Saraf S/O Late Shri Khatanand @ K. Anand Saraf Aged About 52 Years R/O Qr. No. M- 1174 Adarsh Nagar S. E. C. L. Colony Kusmunda Tahsil Katghora, District Korba (Chhattisgarh).....(Defendant)

---- Respondent

Petitioner Dharam Prakash Saraf is present in person.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

02.12.2015

Heard on admission.

2. By filing the instant petition, the petitioner has prayed that order dated 19.10.2015 passed by the Court below may be set aside and the trial Court may be directed to proceed further in the matter as per requirement of the law. He further prayed that necessary directions invoking jurisdiction under Article 227 of the Constitution of India may be issued that the trial Court may not grant time to the defendant without assigning the reason as provided under the proviso of Order 8 Rule 1 of the Code of Civil Procedure, 1908 (for short 'the Code'). It is further prayed that direction may be issued that subordinate court has to take cognizance that the defendant shall within 30 days from the date of service of summon on him present the written statement on his defence. Further prayed that necessary directions may be issued for explaining as to what was the special reason that even after expiry of 30 days to file written statement, the same was filed without any application or affidavit assigning reasons and extension of time.

3. The petitioner has duly supported the ground taken in the petition and submitted that the matter may be admitted for hearing and after due consideration relief as prayed in the petition may be given to him.

4. For the purpose of appreciation regarding admission, the instant writ petition, documents adduced along with the petition and also impugned order dated 19.10.15 are perused.

5. In the impugned order, the Court below has mentioned that defendant had filed the written statement on 28.7.2015 and thereafter the matter was posted for the proceedings under Section 89 of the Code. Thereafter on 19.8.2015, the plaintiff had filed application under Order 8 Rule 1 of the CPC and the Court below passed the impugned order for hearing both the parties for the application under Order 8 Rule 1 of the CPC on 19.10.15.

6. Upon consideration of the matter and the impugned order goes to show that before filing of the said application, written statement has been filed on earlier date. The Court below held that the application filed subsequently after filing the written statement is not maintainable.

7. On due consideration, looking to the entire facts and grounds pleaded in the petition, I do not see any illegality or impropriety in the impugned order passed by the Court below as the application was filed after filing of the written statement at subsequent stage. I do not see any reason to admit the instant petition. Consequently, the instant petition is dismissed at motion stage itself. No order as to cost.

**Sd/-
(Chandra Bhushan Bajpai)
JUDGE**