

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 998 of 2015

1. Dolkunwar W/o Hridaylal Patel, Aged About 35 years, R/o Village Parsada, Tahsil and District Raigarh Chhattisgarh.....
(Defendant)
2. Lalkumar S/o Tikaram Patel, aged about 35 years, R/o Village Parsada, Tahsil and District Raigarh Chhattisgarh.....(Defendant)
3. Bhagatram Patel S/o Sunderlal Patel, aged about 48 years, R/o Village Parsada, Tahsil and District Raigarh Chhattisgarh.....
(Defendant)
4. Chhatarmani Patel S/o Lalan Prasad Patel, aged about 38 years, R/o Village Parsada, Tahsil and District Raigarh Chhattisgarh.....
(Defendant)
5. Ghanshyam Patel S/o Chamar Singh Patel, aged about 35 years, R/o Village Parsada, Tahsil and District Raigarh Chhattisgarh.....
(Defendant)
6. Hridaylal Patel S/o Chandulal Patel, aged about 50 years, R/o Village Parsada, Tahsil and District Raigarh Chhattisgarh.....
(Defendant)

---- Petitioners

Versus

1. Chhabilal Patel S/o Niranjan Patel, aged about 38 Years, R/o Village Parsada, Tahsil and District Raigarh Chhattisgarh.....
(Plaintiff)

---- Respondent

For Petitioners – Shri R.K.Jaiswal, Advocate.
For Respondent – None, not noticed.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

02/12/2015

1. Heard on admission.
2. On behalf of the petitioners, it is submitted that the petitioners had filed the instant WP(227) with a prayer to quash the impugned order dated 15-04-2015 and 03-11-2015. It is further submitted that on 15-04-2015, the opportunity to file W.S. closed by the Court below was not in the knowledge of the petitioners/defendants as their counsel not informed the same to the defendants and for the first time the counsel for the defendants gave his

appearance on 03-11-2015 wherein they prayed the opportunity to cross-examine the witnesses. The Court below rejected the prayer for adjournment for preparation and cross-examination to the plaintiff's witness. It is prayed that the Court be pleased to quash both the orders and direct to accept the reply and the prayer to cross the plaintiff/respondent.

3. Learned counsel for the petitioners duly supported the grounds taken in the instant WP(227) and prayed that on the basis of the grounds and the facts mentioned in the WP(227), the petition may be admitted for hearing and after hearing of the petition finally, relief, as prayed, may be granted to the petitioners.

4. For the purposes of appreciation regarding any prima facie illegality or impropriety in the orders passed by the Court below on 15-04-2015 and 03-11-2015 are perused, also perused the entire order sheets annexed along with the matter.

5. On due consideration, it appears from the order sheets dated 30-10-2014, 17-12-2014, 13-01-2015, 19-02-2015, 18-03-2015 and also 15-04-2015 that the petitioners were duly represented by their respective counsel. They prayed for many opportunities to file W.S. On 18-03-2015, a last chance was granted by the Court below; and even on 15-04-2015 no W.S. was filed by the petitioners and since no any application for an opportunity to file W.S. had been filed before the Court below, no any reason was shown on behalf of the petitioners for not filing the W.S., the Court below closed the opportunity of defendants/petitioners to file W.S. and the matter was posted for plaintiff's evidence. On 17-07-2015 the matter was again fixed for plaintiff's evidence. On 20-08-2015 the plaintiff filed his affidavit as examination-in-chief through the affidavit as per Order 18 Rule 4 of the CPC, copy was given to the petitioners/defendants, they were represented. On 21-09-2015 Shri J.R.Patel

appeared for defendants 1, 2, 3 and 6, the other defendants were represented through their counsel as mentioned in the earlier order sheets. After taking the matter for hearing third time, as there was no representation at the time of hearing regarding defendants 4 and 5, the Court below proceeded ex-parte against defendants 4 and 5; on behalf of other defendants 1, 2, 3 and 6 an application was filed under Order 17 Rule 1 for adjournment regarding defendants. The Court below adjourned the matter by not recording the statement of the plaintiff, an opportunity was given to the petitioners and the matter was listed for plaintiff's evidence on 03-11-2015. On 03-11-2015, again an application under Order 17 Rule 1 of the CPC was filed by defendants 1, 2, 3 and 6 and prayed for adjournment for cross-examination of the plaintiff's witnesses; the Court below appreciated the facts and observed that on 30-10-2014 Vakalatnama had been filed jointly by Shri N.K.Patel and Shri J.R.Patel to represent defendants 1 to 3 and 6 and thereby from the day one Shri J.R.Patel filed his power to represent the defendants. The Court further appreciated the facts and directed that the matter be taken up on 3.00 p.m. for cross-examination of the plaintiff's witnesses; further the matter was taken up on 03.30 p.m. and the defendants 1, 2, 3 and 6 were not represented through their respective counsel Shri J. R.Patel. The Court below proceeded ex-parte against the said defendants.

6. On due consideration, these facts remain undisputed as per the order sheets, proceedings, and as nothing demonstrated on behalf of the petitioners that Shri J.R.Patel had not filed his power from the day one, i.e., 30-10-2014, it goes to show that he was very well representing the parties by filing his power right from 30-10-2014. Regarding the other facts, within any time frame, the order of the Court below to close the opportunity to file the W.S. has not been challenged by the defendants by filing any revision before this Court. Further

point to be taken note of is that if the Court proceeded ex-parte against the defendants 1, 2, 3 and 6, then why petitioners have not filed any appropriate application to set aside their non-appearance as per Order 9 Rule 7 of the CPC; no reason is shown as to why the petitioners not opted the recourse of Order 9 Rule 7 of the CPC.

7. On entire consideration of the matter, in the considered view of this Court, the orders impugned passed by the Court below do not appear to be illegal or without any propriety. Accordingly, the same do not require any interference for the reasons indicated above. The petition is not liable for admission. Consequently, the petition is dismissed at the motion stage itself.

8. No order as to cost.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE