

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.80 of 2016**

Lalit Kumar Rai S/O Shri Bhagwandin Rai, Aged About 50 Years
R/O Gondpara, Opposite Pendabada, Bilaspur, Tahsil & District
Bilaspur. Civil & Revenue District Bilaspur. (Chhattisgarh)

---- **Petitioner****Versus**

1. Smt. Poonam Rai W/O Shri Banwari Lal Rai, Aged About 33 Years D/O Shri Ganesh Prasad Rai, R/O Village Podi, Tahsil Kota, District Bilaspur (Chhattisgarh) Presently At Gaya Vihar, Sarkanda, Bilaspur, District Bilaspur (Chhattisgarh).
2. Archana Rai, D/O Shri Ganesh Rai, Aged About 29 Years R/O Village Podi, Tahsil Kota, District Bilaspur (Chhattisgarh) Presently At Gaya Vihar, Sarkanda, Bilaspur, District Bilaspur (Chhattisgarh).
3. Babulal, S/O Mahettar Singh, Aged About 60 Years R/O Village Podi, Tahsil Kota, District Bilaspur (Chhattisgarh)
4. Netram, S/O Vishnath Singh, Aged About 23 Years R/O Village Podi, Tahsil Kota, District Bilaspur (Chhattisgarh)
5. Kundan Singh, S/O Shivnath Singh, Aged About 22 Years R/O Village Podi, Tahsil Kota, District Bilaspur (Chhattisgarh)
6. State Of Chhattisgarh, Through The Collector, Bilaspur (Chhattisgarh)

---- **Respondents**

Shri Devesh Chandra Verma, counsel for the petitioner.
Smt. M. Asha , Panel Lawyer for the State/respondent No.6.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****29.02.2016.**

At the outset, learned counsel for the petitioner submits that looking to the facts involved in the civil suit No.18A/14 (Lalit Kumar Rai vs. Smt. Poonam Rai & Ors.) whereby and whereunder the Court below directed the plaintiff/petitioner to remain present before the trial Court for the examination of the parties as per Order 10 of the Code of Civil Procedure, 1908 (for short 'the Code') and on 13.7.2015, the Court below examined

defendant No.1/respondent No.1 under the provisions of Order 10 Rule 2 of the Code and as the plaintiff/petitioner remained absent for his examination as ordered as per order dated 06.7.15, an application under Order 17 Rule 1 of the Code is filed for adjournment regarding examination of the petitioner/plaintiff, the Court below vide order dated 13.7.2015 held that though the lawyer of the plaintiff/petitioner was specifically directed to ensure the personal attendance of the plaintiff, the plaintiff failed to present and also as no any sufficient cause was demonstrated to satisfy the Court, the Court below proceeded further under Order 10 Rule 4 read with Order 9 Rule 12 of the Code and dismissed the suit filed by the plaintiff.

2. It is submitted that as the plaintiff committed a mistake though not completely under his control, by non appearing in person before the Court below, but as he is the plaintiff who paid the Court fee, came before the court for adjudication of the matter as per law, he may be given one opportunity so that he can comply with the orders of the court below and to keep him present before the trial court on a given date for his examination under the provisions of Order 10 of the Code thereby after his examination the Court may dispose of the matter as per provision of entire procedural law. On the ground of mercy, one opportunity may be given and the matter can be disposed of without even noticing other respondents.

3. On due consideration, looking to the entire facts as surfaced in the instant writ petition and the documents annexed, it appears that though the plaintiff has not complied with the order of the Court below and he has not appeared in person on 13.7.15 and on the other hand, the application for adjournment of the matter under Order 17 Rule 1 of the Code has been preferred, in the larger interest of justice, in the considered view of this court, it would be proper to provide an opportunity to the plaintiff/petitioner for the compliance as ordered by the Court below.

4. Consequently, the matter is disposed of without even noticing the respondents at the motion stage itself by hearing the petitioner finally and it is directed to the plaintiff/petitioner to appear before the Court below i.e. the Civil Judge Class-II, Kota, District Bilaspur (CG) positively on **21.4.2016 at 11.00** am and files a written application informing the Court below that he is present before the Court for his examination as required under Order 10 of the Code as per Order dated 06.7.2015. If he files such application and make himself available for the examination as party on 21.4.2016 itself at 11.00 am, then only the Court below, as directed, to record his examination as per order date 06.7.2015 under Order 10 of the Code. After recording the examination on the same date the trial Court is directed to restore the said civil suit in its original number and after recording the statement the trial Court is directed to proceed further as per the provisions of law. The civil suit dismissed vide order dated 13.7.2015 be

restored to its original number only when the petitioner appears himself along with such application for examination before the Court below .

5. With the above direction and observation, after fulfillment of the direction made in this behalf by the petitioner, the order dated 13.7.2015 to set aside the civil suit be set aside. Petition disposed of . No order as to cost.

Certified copy today itself.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE