

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 465 of 2016

- Nitesh Agrawal S/o Gulabchandra Agrawal, Aged About 30 Years
Occupation Business, R/o In Front Of Town Hall, Raigarh, Tahsil
& District Raigarh (Chhattisgarh).

---- Petitioner

Versus

1. Smt. Chanda Moda Wd/o Late Vijaya Kumar Moda, Aged About
48 Years R/o Jain Machinery Main Road, Giridihi, Tahsil &
District Giridih (Orissa).
2. Akash Moda, S/o Late Vijay Kumar Moda, Aged About 19 Years
Occupation Study, R/o Jain Machinery Main Road, Giridihi,
Tahsil & District Giridih (Orissa).
3. Maa Vaishnav Project, Partnership Firm, Through Partner Sushil
Mittal S/o Shiv Narayan Mittal, Aged About 43 Years, R/o
Nayaganj Raigarh, Tahsil & District Raigarh (Chhattisgarh).
4. Sushil Mittal S/o Shiv Narayan Mittal, Aged About 43 Years R/o
Nayaganj Raigarh, Tahsil & District Raigarh (Chhattisgarh).
5. Sunil Kumar Agrawal, S/o Chaturbuj Agrawal, Aged About 48
Years R/o Dani Para Raigarh, Tahsil & District Raigarh
(Chhattisgarh).
6. Satish Agrawal, S/o Late Chagan Lal Agrawal, Aged About 48
Years R/o Nayaganj Raigarh, Tahsil & District Raigarh
(Chhattisgarh).
7. State Of Chhattisgarh, Through Collector Raigarh, District
Raigarh (Chhattisgarh).

---- Respondent

For Petitioner	Dr. N.K. Shukla, Senior Advocate with Mr. Tarkeshwar Nande, Advocate
For Respondent /State	Mr. P.K. Bhaduri, Government Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order on Board

03.08.2016

1. Petitioner has preferred this writ petition for quashing the order dated 22-6-2016 (Annexure – P/1) passed by the trial Court directing that in view of the order passed by the High Court on 3-5-2016 in WP227 No.232 of 2016 the suit shall be heard on day to day basis.
2. The petitioner is the plaintiff before the trial Court. The petitioner has preferred a suit on 20-11-2013 for specific performance of contract and permanent injunction. Against the order passed on interlocutory applications, the defendants No.1 & 2 had preferred WP227 No.232 of 2016, which was disposed of on 3-5-2016 directing the trial Court to dispose of the matter as expeditiously as possible preferably within six months from the next date of hearing. The parties were also directed to cooperate with the trial as required under the law. The petitioners of the said writ petitions were also directed to file a copy of the order before the trial Court for compliance. Registrar (Judicial) was also directed to transmit a copy of the order to the trial Court for compliance through usual and fax mode immediately. When the order was presented before the trial Court, on 22-6-2016, the impugned order has been passed for proceeding with the hearing of the suit on day to day

basis.

3. It appears when the trial Court proceeded to hear the suit on day to day basis, the plaintiff moved before this Court for modification of the order dated 3-5-2016 passed in WP227 No.232 of 2016. In this modification application bearing MCC No.485 of 2016, the coordinate Bench of this Court passed the following order on 12-7-2016 :

“4. The instant MCC has been preferred for a limited prayer to modify the order passed by this Court on 3.5.2016 in Writ Petition (227) No.232/2016.

5. By filing the instant MCC, it is prayed that this Court may observe that there is no order for day to day hearing and the plaintiff along with the defendants be afforded reasonable time to put forth their case to avoid miscarriage of justice.

6. Perused the impugned order.

7. By order dated 3/5/2016, the trial (*sic* Court) is directed to dispose of the matter as expeditiously as possible preferably within six months from the next date of hearing and also the parties were directed to co-operate with the trial as

required under the law. From perusal of the order and the facts of the case, the petition for modification of the order is not tenable. If any party is aggrieved during hearing and trial, they may take course of law.

8. With these observations, the instant MCC is dismissed as not maintainable without any appreciation of the facts.”

4. It is argued by Dr. Shukla, learned senior counsel appearing for the petitioner that the trial Court should afford proper opportunity of hearing in the suit instead of mandatorily posting the suit on every working day.
5. This Court has heard learned senior counsel at length, however, in view of the order passed by this Court in MCC No.485 of 2016, any direction in variation of the said order may amount modification of the order passed in WP227 No.232 of 2016 or MCC No.485 of 2016. Once the petitioner has approached this Court with a similar relief in MCC No.485 of 2016, it is neither proper nor permissible for this Court to issue any such direction which may run contrary to what has been directed or observed by the coordinate Bench of this Court. Even otherwise the jurisdiction of the Court under Article 227 of the Constitution of India cannot be used to direct the

trial Court as to at what intervals the hearing of the suit be posted. The order under challenge has not decided any *lis* or issue between the parties nor the rights of any of the parties is affected if the matter is heard on day to day basis. The judicial discretion of the trial Court in fixing the dates of hearing has to be respected and left to the wisdom of the Court rather than interfering with such trivial issues.

6. *Ex-consequenti*, the writ petition, *sans substratum*, is liable to be and is hereby dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

Gowri