

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 473 of 2016**

- Ram Sai S/o Gariba, Aged About 55 Years Caste- Mahar, Occupation- Agriculturist, R/o Village- Thailitola, Tahsil- Ambagarh Chowki, District- Rajnandgaon (Chhattisgarh)

---- Petitioner**Versus**

1. Nemichand S/o Shivcharan, Aged About 45 Years Caste- Mahar, Occupation- Agriculturist, R/o Village- Thailitola, Gram Panchayat- Joratarai, Tahsil And Police Station- Ambagarh Chowki, District- Rajnandgaon (Chhattisgarh), (Plaintiff)
2. State Of Chhattisgarh, Through- Collector, Rajnandgaon (Chhattisgarh), (Defendant No. 2)

---- Respondents

For Petitioner	:	Shri Abhishek Sharma, Advocate
For Respondent-State	:	Shri Shashank Thakur, GA

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****08/08/2016**

1. Petitioner/defendant No.1 is aggrieved by the order passed by the trial Court on 14-7-16, whereby his right to file written statement has been closed.
2. Learned counsel for the petitioner would argue that the trial Court has preponed the date of hearing without noticing the petitioner.
3. Perusal of the order-sheet dated 26-4-16 would demonstrate that the next date was noted by the petitioner's counsel for 27-6-16, but in the order-sheet it was posted for 12-5-16. The matter was preponed and taken up on 7-5-16 and without affording any opportunity to the defendants, the trial

Court heard the plaintiff's arguments on application under Order 39 Rule 1 & 2 CPC and posted the same for orders on 12-5-16 and thereafter on 13-5-16. Since the dates were not known to the petitioner's counsel, he could not remain present on 13-5-16, however, on the said date, the prayer for grant of temporary injunction was allowed and it was posted on 15-6-16. On this date, plaintiff was present in person and the presence of counsel of petitioner/defendant No.1 has been mentioned, even though according to the learned counsel for the petitioner, the counsel was not present. On 27-6-16 last opportunity to file written statement was allowed in favour of the petitioner and thereafter the impugned order has been passed on 14-7-16.

4. Since the present writ petition is at the admission stage this Court has not verified the correctness of the allegations made by petitioner's counsel, however, the order-sheet speaks for itself and the statement appears to be *prima facie* believable. The trial Court should be more careful when the dates are preponed for hearing an important interim application for grant of temporary injunction, otherwise any party to the suit may nurture an impression that fair opportunity is not provided by the trial Court.
5. Be that as it may, in the present petition, the petitioner is aggrieved by the trial Court's order, whereby his right to file written statement has been closed. The petitioner was served with the summons in the suit for hearing on 8-4-16 when he appeared before the trial Court for the first time. The trial Court has thus passed the impugned order immediately after expiry of 90 days period on the ground that the petitioner has failed to submit written statement within 90 days. It also appears, the defendant No.2 in the suit is yet to be served, therefore, the suit has not progressed to such a stage where on account of non-filing of written statement by the petitioner, the hearing is withheld or protracted.

6. In the matter of **Kailash V. Nanhku**¹, the Supreme Court has held that the limitation of 90 days for filing written statement is directory and not mandatory.
7. In view of the above stated legal position, ends of justice would be served if the petition is disposed of with a direction that in the event, the petitioner submits his written statement within a period of one month from today and pays cost of Rs.2000/- to the plaintiff within the same period, he shall be allowed to file written statement. Thereafter the trial Court shall proceed with the hearing of the suit , in accordance with law.

Sd/-
Judge
Prashant Kumar Mishra

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¹ AIR 2005 SC 2441