

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (227) NO. 720 OF 2016

- Ratan Kaur, W/o Late Kuldeep Singh Siddhu, aged about 45 years, permanent resident of Jhalmala, Tahsil Pusaur, District Raigarh (C.G.), at present residing in front of Gurudwara, near Devari Water Tank, District Gondia (M.H.)

... Petitioner

Versus

1. Mahinder Kaur, D/o Late Jawahar Singh, W/o Harjinder Singh, aged about 50 years, occupation- housewife, permanent resident of Village Jhalmala, Tahsil Pusaur, District Raigarh (C.G.), at present residing at Gaushala Ward, near Circus Ground, behind Guru Ambulance, Gondia (M.H.)
2. Gurudayal Singh S/o Late Jawahar Singh, aged about 40 years.
3. Surjeet Kaur, W/o Late Jawahar Singh, aged about 70 years.
4. Meet Kaur, W/o Jatinder Singh, D/o Late Jawahar Singh, aged about 42 years.
All are permanent resident of Jhalmala, Tahsil Pusaur, District Raigarh (C.G.), at present residing in front of Gurudwara, near Devari Water Tank, District Gondia (M.H.)
5. State of Chhattisgarh, through Collector, Raigarh (C.G.)

... Respondents

For Petitioner	:	Mr. Ashish Gupta, Advocate.
For Respondent 5	:	Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

28/11/2016

1. The present petition under Article 227 of the Constitution of India has been preferred by the Petitioner assailing the order dated 21.9.2016 passed by the Second Civil Judge, Class-I, Raigarh in Civil Suit No. 10-A/2015 whereby the learned Civil Court has closed the right of the Petitioner/Defendant No.3 of filing Written Statement as well as reply to the application under Order 39 Rule 1 & 2 of CPC filed by Respondent No.1/Plaintiff.
2. It is a case where the Respondent No.1/Plaintiff has filed a civil suit seeking for declaration of title and possession over the suit property. Along with suit, she has also filed an application under Order 39 Rule 1 & 2 of

CPC for grant of permanent injunction. The Petitioner/Defendant No.3 in spite of the notice, refused to enter appearance before the Court below and therefore the Court below initially vide order dated 26.11.2015 proceeded *ex parte*. However, subsequently, an application under Order 9 Rule 13 of CPC was preferred by the Petitioner/Defendant No.3 which stood allowed on 13.5.2016 and time was granted to her for submitting her reply by 7.7.2016. However, the Petitioner/Defendant No.3 thereafter failed to file her reply on next three dates, i.e., 7.7.2016, 21.7.2016 and thereafter on 24.8.2016 respectively given by the Court below. Subsequently, when the matter came up on 16.9.2016 again the Petitioner-Defendant failed to file her reply and at her request further time was granted to her subject to cost of Rs.300/- and the matter thereafter was fixed for 21.9.2016 for filing the reply. However, on 21.9.2016 again the Petitioner/Defendant No.3 did not file her reply in spite of the cost imposed upon her on the previous date and therefore the Court below was left with no other option but to close the right of the Petitioner/Defendant No.3 to file written statement and reply to the application under Order 39 Rule 1 & 2 of CPC and proceeded further to decide the case on merits with the available records.

3. Counsel for the Petitioner submits that the Petitioner/Defendant No.3 is a resident of District Gondia (Maharashtra) and therefore for personal difficulties she was not able to reach the Court and therefore prays that one last opportunity may be granted to the Petitioner/Defendant No.3 to file her reply before the Court below with which she can proceed with the matter and defend her case.

4. Counsel for the State opposing the petition however submits that the dispute primarily is between Petitioner/Defendant No.3 and Respondent No.1/Plaintiff and the State is only a formal party.

5. Considering the total facts and circumstances of the case particularly, the fact that the matter is still at its primary stage when it is fixed for consideration of application under Order 39 Rule 1 & 2 of CPC and the proceeding not proceeded substantially, denial of the right to file reply may prove fatal to the Petitioner/Defendant No.3 in defending her case before the Court below. Therefore, for the proper adjudication of the case and to do substantial justice, this Court is of the opinion that ends of justice would meet if the Petitioner/Defendant No.3 is granted one more opportunity to file her reply before the Court below.

6. Accordingly, let the Petitioner/Defendant No.3 file her reply before the Court below within a period of 10 days from today. It is directed that the Court below shall now take up the matter on 19.12.2016. Meanwhile, the Petitioner/Defendant No.3 shall submit her reply before the Court below. In the event if the Petitioner/Defendant No.3 files her reply the same shall be taken on record and the matter shall be proceeded further. It is also made clear that under any circumstances if the Petitioner/Defendant No.3 fails to file her reply, this order would loose its efficacy and the Court below will be at liberty to proceed further and decide the case on its merits.

7. The petition is disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge