

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 183 of 2016

1. Smt. Sandhya Mishra W/o Shri Vidhan Mishra, Aged About 58 Years
R/o Fingeshwar House, Near Holihart School, Civil Lines, Raipur,
District Raipur, (Chhattigarh).....(Defendant No.1)

---- Petitioner

Versus

1. Holy Heart Education Academy Registered Office, Fingeshwar House,
Civil Lines, Raipur (Chhattigarh), Through Director Shri Surendra
Pratap Singh, S/o Late Shivpujan Singh, R/o Holy Heart Education
Premises, Fingeshwar Bada, Civil Lines, Raipur,
(Chhattigarh).....(Plaintiff)
2. Mahendra Bahadur Singh, S/o Late Lal Bahadur Singh, Aged About 83
Years R/o Fingeshwar, District Gariyaband, (Chhattigarh).....
(Defendant No.2)

---- Respondents

For Petitioner : Shri T.K. Jha, Advocate
Respondents not noticed.

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

16/03/2016

1. Heard.
2. At the out set it is submitted on behalf of the petitioner that the points for determination for the inspection of spot by the Commissioner are not specifically mentioned in the prayer clause of interim application under order 26 Rule 9 read with Order 39 Rule 7 (a) of the Code of Civil Procedure, 1908 (for short the C.P.C.) and the impugned order dated 23.2.2016 also does not seems to be a speaking order for the said prayer. Hence, it is prayed that the petitioner/ defendant D1 may be permitted to file application afresh wherein specific points for the local inspection by the Commissioner be mentioned and thereafter, after hearing the said interim application under Order 26 Rule 9 read with Order 39 Rule 7 (a) of the C.P.C., the Court below be directed to

dispose of the same by passing order afresh without being influenced by the order dated 23.2.2016 in the matter, therefore, the matter may be disposed of without even noticing to the respondents.

3. On due consideration, after perusal of the impugned order the interim application filed on behalf of the petitioner/defendant D1, in the considered view of this Court, the matter as such is disposed of without any appreciation on its merits. The said part of the order dated 23.2.2016 in relation to interim application filed on behalf of defendant D1 under Order 26 Rule 9 read with Order 39 Rule 7 (a) of the C.P.C. is set aside. The petitioner/ defendant D1 is granted liberty to file a fresh application for the cause as filed earlier under Order 26 Rule 9 read with Order 39 Rule 7 (a) of the C.P.C. The Court below is directed that after affording opportunity to the respondents for their written reply and hearing both the parties, the application filed afresh be disposed of strictly in accordance with law on the basis of merits of the said interim application without being influenced with the order dated 23.2.2016 afresh.

4. With the above directions, the instant Writ Petition (227) is disposed of.

5. No order as to cost.

Sd/

(Chandra Bhushan Bajpai)
Judge