

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WP227 No. 52 of 2016**

1. Smt. Nisha Devi Wd/o Vishnunath, Aged About 50 Years Caste Kashyap, R/o Janjgir Tahsil Janjgir, District Janjgir Champa (Chhattisgarh).....Defendant No. 1

**---- Petitioner**

**Versus**

1. Ramcharan S/o Ramgulam, Aged About 75 Years R/o Kera Road Janjgir, Tahsil Janjgir, District Janjgir Champa (Chhattisgarh).....Plaintiff
2. State Of Chhattisgarh, Through Collector, District Janjgir Champa (Chhattisgarh).....Defendant No. 2

**---- Respondent**

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|----------------------|----------------------------------|
| For Petitioner       | Shri Subhash Yadav, Advocate     |
| For Respondent No.1  | Shri Manoj Paranjape, Advocate   |
| For Respondent/State | Shri Avinash Singh, Panel Lawyer |

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**Hon'ble Shri Justice Prashant Kumar Mishra**

**Order On Board**

**30/08/2016**

1. The petitioner/defendant is aggrieved by the order passed by the trial Court whereby his application under Order 9 Rule 7 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'the CPC') has been rejected and the *ex parte* order dated 26-11-2015 has been maintained.
2. A reading of the impugned order and consideration of the arguments raised by the learned counsel for the petitioner would indicate that

on the said date the suit was fixed for cross-examination of the defendant witnesses, however, neither the defendant witnesses nor their counsel appeared in the Court, therefore, the Court proceeded *ex parte* on the ground that the suit is pending since 2010 and the defendant is negligent in conducting the suit. The prayer for setting aside the *ex parte* order has also been rejected on the same ground with addition that the suit is already fixed for final arguments.

3. By interim order passed in this writ petition on 21-1-2016 the further proceedings before the trial Court has been stayed.
4. Considering the entire facts situation of the case, I deem it appropriate that the petitioner should be allowed one chance to produce his entire witnesses on payment of some cost, therefore, while setting aside the impugned order, the petition is disposed of with a direction that on petitioner paying cost of Rs.2,500/- to the plaintiff within a period of 15 days from today, the trial Court shall fix a date for recording the entire evidence of the defendant witnesses and thereafter, decide the suit in accordance with law. Let the suit itself be decided at the earliest preferably within a period of three months from the date of submission of certified copy of this order.

Sd/-  
Judge  
Prashant Kumar Mishra

Gowri