

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. (227) No. 262 of 2016

Madhoram and sons, Registered partnership Firm, Through :- Santosh Kumar Gupta, S/o Late Madhoram Gupta, Aged about 67 years, R/o Handi Chook Raigarh (C.G.), Shop Madhoram and Sons Subhash Chook Raigarh, Tah. & Distt. Raigarh (C.G.) Defendant

---- Petitioner

Versus

Murlidhar Gupta, S/o Bhagirathi Gupta, Aged about 57 years; R/o Chhatamuda, Raigarh, Tah. & Distt. Raigarh (C.G.)

---- Respondent

For Petitioner : Shri Vineet Kumar Pandey, Advocate.
For Respondent : Shri S.N. Nande, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

22/11/2016

(1) By the impugned order dated 11.03.2016, petitioner's application filed under Order 16 Rule 1 CPC has been rejected by the trial Court on the ground that suit is of the year 2004 and pending for last 12 years.

(2) Witness No. 5 – Santosh Dewangan, the then Nazul Officer, Raigarh & Witness No. 6 – N.R.Sahu, Nazul Officer, Raigarh are indicated as witnesses of the defendant in the list filed along with application under Order 16 Rule 1 CPC and they are government servants. Now, the petitioner/defendant is desirous of obtaining summons for their attendance before the Court, which has been rejected by the order impugned.

(3) I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

(4) Since the witnesses No. 5 & 6 are government servant and petitioner is willing to examine them as their witnesses and they cannot be examined unless summons is issued to them by trial Court.

(5) In the matter of **Kokkanda B. Poondacha & others Vs. K.D. Ganapathi and another**¹, Their Lordships of the Supreme Court has

¹ (2011) 12 SCC 600

held as under:-

“11. The next question which needs consideration is whether a litigant filing the list of witnesses is bound to indicate, howsoever briefly, the relevance of the witness to the subject-matter of the suit, etc., and, in any case, one party to the proceedings cannot cite the advocate representing the other side as a witness and thereby deprive the latter of the services of the advocate without disclosing as to how his testimony is relevant to the issues arising in the case. In **Mange Ram v. Brij Mohan**², this court interpreted Order 16 Rules 1(1),(2) and (3) CPC and observed:

“9. If the requirement of these provisions are conjointly read and properly analysed, it clearly transpires that the obligation to supply the list as well as the gist of the evidence of each witness whose name is entered in the list has to be carried out in respect of those witnesses for procuring whose attendance the party needs the assistance of the Court.”

(6) In view of the law laid down by the Supreme Court in **Kokkanda B. Poondacha & others (supra)**, it would be expedient to allow the petitioner/defendant to examine witnesses No. 5 & 6 namely Santosh Dewangan, the then Nazul Officer, Raigarh & N.R.Sahu, Nazul Officer, Raigarh, respectively subject to payment of cost of ₹ 5,000/- payable to the plaintiff, accordingly the order impugned dated 11.03.2016 is liable to be and is hereby set aside.

(6) It is the responsibility of the petitioner/defendant to serve them by special process server on their correct address after payment of witnesses' expenses and cost etc.

(6) Since the suit is pending since 2004 and the trial Court has already expressed its concern for early disposal, it is expected to be decided by the trial Court expeditiously preferably within a period of six months from the date of receipt of copy of this order.

(7) Accordingly, the writ petition is allowed to the extent indicated above.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

