

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 141 of 2015**

1. Barkat Ali S/o Late Shri Jamal Bhai Aged About 46 Years Resident Of New Adarsh Nagar, Aman Apartment, Borsi Road, Durg, Tahsil And District- Durg (C.G.)
2. Mehndi, S/o Late Shri Jamal Bhai Aged About 53 Years Resident Of New Adarsh Nagar, Aman Apartment, Borsi Road, Durg, Tahsil And District- Durg (C.G.)
3. Jalaludin, S/o Late Shri Jamal Bhai Aged About 51 Years Resident Of New Adarsh Nagar, Aman Apartment, Borsi Road, Durg, Tahsil And District- Durg (C.G.)
4. Ahmad Ali S/o Late Shri Jamal Bhai Aged About 42 Years Resident Of New Adarsh Nagar, Aman Apartment, Borsi Road, Durg, Tahsil And District- Durg (C.G.)
5. Ajeem Samnani S/o Late Shri Azeez Aged About 28 Years Resident Of New Adarsh Nagar, Aman Apartment, Borsi Road, Durg, Tahsil And District- Durg (C.G.)
6. Shanawaz S/o Late Shri Azeez Aged About 25 Years Resident Of New Adarsh Nagar, Aman Apartment, Borsi Road, Durg, Tahsil And District- Durg (C.G.)
7. Smt. Dilashad W/o Late Shri Azeez Aged About 52 Years Resident Of New Adarsh Nagar, Aman Apartment, Borsi Road, Durg, Tahsil And District- Durg (C.G.)

---- Petitioners**Versus**

1. Smt.Rukmai W/o Late Shri Bhagwan Singh Aged About 76 Years Resident Of Pachri Para, Station Road, Ward No. 28, Beside The House Of Advocate Hare Krishan Tiwari, Behind M.P. Hotel, Durg, District- Durg (C.G.)
2. Kundan S/o Late Shri Bhagwan Singh Aged About 55 Years Occupation-Service. Resident Of Pachri Para, Station Road, Ward No. 28, Beside The House Of Advocate Hare Krishan Tiwari, Behind M.P. Hotel, Durg, District- Durg (C.G.)
3. Dinesh Kumar S/o Late Shri Bhagwan Singh Aged About 53 Years Resident Of Pachri Para, Station Road, Ward No. 28, Beside The House Of Advocate Hare Krishan Tiwari, Behind M.P. Hotel, Durg, District- Durg (C.G.)
4. Santosh Kumar S/o Late Shri Bhagwan Singh Aged About 45 Years Resident Of Pachri Para, Station Road, Ward No. 28, Beside The House

Of Advocate Hare Krishan Tiwari, Behind M.P. Hotel, Durg, District- Durg (C.G.)

5. Chandan S/o Late Shri Bhagan Singh Aged About 53 Years Resident Of Pachri Para, Station Road, Ward No. 28, Beside The House Of Advocate Hare Krishan Tiwari, Behind M.P. Hotel, Durg, District- Durg (C.G.)

---- Respondents

For Petitioners	:	Shri B.L. Parekh and Shri Rajeev Shrivastava, Advocates
For Respondents	:	Shri Sanjay Agrawal, Advocate on behalf of Shri Goutam Khetrpal, Advocate

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

12/04/2016

1. At the out set, learned counsel for the petitioners submits that as observed by the Court below in the impugned order dated 12.12.2014 that the application filed on behalf of the petitioners under Order 16 Rule 1 of the Code of Civil Procedure, 1908 (for short 'the Code') is not containing the fact to prove the document for that employee of the Municipal Corporation, Durg be summoned along with the original documents. He submits that the petitioners may file an application under Order 16 Rule 1 of the Code afresh containing all the necessary facts and the Court below may appreciate and dispose of the said interim application afresh without being influenced with the said part of the order dated 12.12.2014. Learned counsel further submits that the trial Court has rejected the interim application filed on behalf of the petitioners under Order 14 Rule 5 of the Code is not to be accepted as the plaintiffs have not filed the said Civil Suit against the Municipal Corporation, Durg and hence, any proceeding conducted by the Municipal Corporation regarding the validity of the same is not required to be adjudicated as the same is against the natural law. The petitioners may be permitted to file a fresh interim application under Order 14 Rule 5 of the Code and also an interim application under Order 1 Rule 10 of the Code with a prayer to

implead the Municipal Corporation, Durg as a necessary party and the trial Court after hearing the matter *bi party* be directed to dispose of the said interim applications afresh without being influenced with the order dated 12.12.2014.

2. The submission made in this behalf is opposed by learned counsel for the respondents.

3. Heard.

4. Perused the entire material also the impugned order dated 12.12.2014.

5. From perusal of the interim applications filed, the impugned order passed by the trial Court, it appears that the above 2 interim applications are not disposed of on its entire merits. Looking to the entire facts and the natural justice, the same requires proper appreciation on the interim applications filed by the petitioners containing all the facts required so that the above mentioned interim applications be disposed of on merits entirely.

6. With this, I am inclined to allow the submission made in this behalf. The instant Writ Petition (227) is disposed of without any appreciation on merits for the above interim applications. The aforementioned part of the impugned order dated 12.12.2014 is hereby quashed. The petitioners are directed to file fresh interim applications under Order 14 Rule 5, Order 1 Rule 10 and Order 16 Rule 1 of the Code. As prayed, the trial Court is directed to dispose of the same after affording opportunity of hearing to the respondents on the said interim applications and to dispose of those 3 interim applications without being influenced with the relevant part of the order dated 12.12.2014 prior to proceed with the hearing of arguments on preliminary issues as directed by the trial Court.

7. The petitioners may file copy of the order before the trial Court for compliance.

8. The petitioners are directed to file all the 3 interim applications as directed before the trial Court till 29th April, 2016. The trial Court is directed to dispose of the same as expeditiously as possible as per provisions of law after affording opportunity of hearing to the respondents and also Municipal Corporation, Durg, if required.

9. Registrar (Judicial) is directed to send a copy of this order to the Court below through usual and fax mode immediately for compliance.

10. The petition is disposed of.

Sd/

(Chandra Bhushan Bajpai)
JUDGE