

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP(227) No. 283 of 2016**

K.P. Enterprises Through Proprietor Pramod Mehta, S/o Shri Babu Bhai Mehta, Aged About 51 Years, R/o 43/10, Padmanabhpur, Durg, Distt. Durg, (Chhattisgarh)

---- Petitioner**Versus**

1. Durg Rajnandgaon Gramin Bank Through Branch Manager, Potiyakala, Adarsh Nagar, Durg, Distt. Durg, (Chhattisgarh)
2. International Tractors Ltd., Jalandhar Road, Hoshiyarpur, (Punjab)

---- Respondents

For Petitioner:	Smt Fouzia Mirza, Advocate.
For Respondent No.1:	Shri N. Naha Roy, Advocate.

Single Bench: Hon'ble Shri P. Sam Koshy, J
Order On Board

22.4.2016

1. Challenge to the present petition is for exercising the supervisory jurisdiction under Article 227 and quashing the order dated 29.2.2016 passed by the 5th Additional Sessions Judge, Durg. The Court, below vide the impugned order has after having closed the right of Respondent No.2 in filing their written statement, had entertained an application under Section 151 CPC and allowing the same took the written statement of Respondent No.2 on record.

2. Learned Counsel for the Petitioner submits that the Court below having once closed the right of filing the written statement, could not have itself entertained a fresh application and reviewed its earlier order and directed the parties to file the written statement and contest the case on merits. According to th Petitioner, the same Court does not have the power to accept written statement having once closed the right of the party.

3. A perusal of the impugned order dated 29.2.2016 clearly shows that the Court below, taking into consideration the explanation submitted by Respondent No.2 of its head quarters being at Hoshiyarpur where they had sent their written statement for vetting and subsequently which was received back a bit late to be filed in the Court below located at Durg. In the process of the vetting of the written document, some delay has occurred. As such there is no mala fides on the part of Respondent No.2 in delaying the filing of the written statement and considering the reasons to be justifiable, the Court below had allowed the application under Section 151 of CPC and had taken the written statement on record and proceeded further to decide the case.

4. Having considered the impugned order dated 29.2.2016, this Court does not find any infirmity in the order passed. Neither is this Court of the opinion that the Court below has exceeded its jurisdiction in allowing the application under Section 151 CPC. It is settled position of law that the power under Article 227 is not exercised in a manner as if the Court was exercising its appellate jurisdiction neither can the Court set aside or ignore the findings of fact arrived at by the Court below. If the findings of the Court below are not without without justifiable reasons, it is difficult for this Court exercising its powers under Article 227 to interfere with the order under challenge.

5. From the perusal of the record and pleadings what is explicit is that the right to file written statement was closed on 29.10.2015. But the application under 151 of CPC requesting to accept the written statement on record was filed on 9.12.2015. This itself shows that there is no inordinate delay in the filing of the application under Section 151 CPC.

6. Under Section 151 of CPC, inherent powers have been conferred on the Court to pass such orders which according to the Court would be

necessary to meet the ends of justice.

7. Another aspect which must be borne in mind is that in between from the time of closing of right till the application under Section 151 of CPC was filed, there was not much progress made in the suit which would have prejudiced the interest of the Petitioner.

8. In the opinion of this Court, it is not a case where there is dereliction of duty and flagrant abuse of power resulting in grave injustice or perversity. There does not seem to be any jurisdictional error or an error of law apparent on the face of record to exercise the writ jurisdiction under Article 227.

9. Considering the total facts and circumstances of the case, this Court does not find any merit in Petition. It is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE