

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 459 of 2016**

- Mohan Lal Pathak S/o Late Ram Milan Pathak, Aged About 51 Years R/o Village Gorakhpur, Tahsil Pendraroad, District Bilaspur, (Chhattisgarh)

---- Petitioner**Versus**

1. Smt. Shobha Tiwari W/o Kailash Tiwari, Aged About 46 Years By Caste Brahman, R/o Village Gorakhpur, Tahsil Pendra Road, District Bilaspur, (Chhattisgarh)
2. Chandravati, D/o Ram Milan Pathak, Aged About 48 Years By Caste Brahman, R/o Village Gorakhpur, Tahsil Pendra Road, District Bilaspur, (Chhattisgarh)
3. State Of Chhattisgarh, Through: The Collector, Bilaspur, (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Ashok Soni, Advocate
For Respondents-State	:	Shri Shashank Thakur, GA for the State

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****02/08/2016**

1. Learned counsel for the petitioner would submit that by the impugned order, the trial Court has rejected petitioner's/plaintiff's application under Order 17 Rule 1 CPC and has directed the defendants to produce witnesses. According to learned counsel, some witnesses were summoned by the trial Court, therefore, the petitioner was not required to produce all the witnesses of his own. The trial Court wrongly observed that the petitioner has failed to produce the witnesses.
2. Having perused the order-sheets filed in this petition, it would appear that

the petitioner has paid the process fee for summoning some of the witnesses and there is no mention in the order-sheets of the relevant dates as to whether the summons were served or not. Similarly, the trial Court while rejecting petitioner's application under Order 17 Rule 1 CPC has not expressly recorded that plaintiff's evidence is closed. After rejecting the application, the trial Court has straightway directed the defendants to produce their witnesses.

3. It appears, as long as, there is no express order of closing plaintiff's evidence, the trial Court cannot direct the defendants to produce their witnesses and more so, when there is nothing in the order-sheets to indicate as to what happened to those witnesses who were issued summons for their examination.
4. Considering the entire facts situation of the case, the writ petition is disposed of with direction that the trial Court shall fix a fresh date for recording plaintiff's witnesses, both who shall be produced by the plaintiff himself and those for whom summons have been issued. Those witnesses who are required to be produced by the plaintiff shall be examined on one day and the examination of the witnesses who have been summoned, shall depend upon the service of summons to them.
5. Accordingly, the writ petition stands disposed of.

Sd/-

Judge
Prashant Kumar Mishra

Ashu