

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(227) No. 1019 of 2015**

1. Devendra Kumar S/o Madhav Soni, Aged About 48 Years R/o Civil Lines, Near District Government Hospital, Dhamtari, Tahsil & District Dhamtari Chhattisgarh
2. Vinod Kumar S/o Madhav Soni, Aged About 36 Years R/o Baniya Para, Dhamtari, Tahsil & District Dhamtari Chhattisgarh
3. Smt. Amrika Soni, Wd/o Madhav Soni, Aged About 65 Years R/o Civil Lines Near District Government Hospital, Dhamtari, Tahsil & District Dhamtari Chhattisgarh
4. Ku. Mamta Soni, D/o Madhav Soni, Aged About 38 Years R/o Civil Lines Near District Government Hospital, Dhamtari, Tahsil & District Dhamtari Chhattisgarh
5. Ku. Kiran Soni, D/o Madhav Soni, Aged About 34 Years R/o Civil Lines Near District Government Hospital, Dhamtari, Tahsil & District Dhamtari Chhattisgarh

---- Petitioners**Versus**

1. Radheshyam S/o Late Tokhanlal Soni, Aged About 53 Years Through General Power Of Attorney Holder Udho Soni, S/o Late Tokhanlal Soni, R/o Baniya Para, Dhamtari , Tahsil & District Dhamtari Chhattisgarh
2. Kishore Kumar, S/o Late Tokhanlal Soni, Aged About 37 Years R/o Baniya Para, Dhamtari, Tahsil & District Dhamtari Chhattisgarh

---- Respondents

For the Petitioners	:	Shri Kshitij Sharma and Shri Adil Minhaj, Advocates.
For the Respondents	:	Shri Anand Dadariya, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****19/02/2016**

1. With the consent of both the parties, the matter is heard finally.
2. Facts in brief required for disposal of the instant writ petition are that the Respondents/ Plaintiffs have filed Civil Suit No. 41A of 2014 (Radheshyam and one another vs. Devendra Kumar and 4 Others) before

the Additional District Judge, Dhamtari, Chhattisgarh. On 26.10.2015, an application under Order XVII Rule 1 of the Code of Civil Procedure, 1908 (for short 'the Code') along with an application for urgent hearing has been filed by the Petitioners/ Defendants to change the date of hearing. On 31.10.2015, the Court below, after due appreciation of the material on record, dismissed the said applications and rejected the prayer of the Defendants to adjourn the case and for providing opportunity to cross-examine the witnesses of the Plaintiffs as well as closed the opportunity of the Defendant to cross-examine the Plaintiffs' witnesses, observing that the matter had been instituted on 21.10.2003, many opportunities were granted to the Defendants i.e. present Petitioners to cross-examine the witnesses of the Plaintiffs and inspite of order dated 19.10.2015 directing the Defendants/ Petitioners to pay the entire cost, the same has not been paid by the Defendants.

3. Against the aforesaid order, the Petitioners/Defendants have filed the instant writ petition on the grounds that the order passed by the Court below on 31.10.2015 is erroneous and contrary to the law as it has failed to appreciate the fact that Counsel for the Petitioners moved the said application on 26.10.2015 to change the date of hearing since he will be out of station on account of personal work. Further ground taken in the petition is that the Learned Court below also failed to appreciate the fact that on the date of hearing on behalf of the regular Counsel for the Defendants, another counsel has appeared and requested for a short adjournment and if short adjournment is granted, no prejudice or hardship would have been caused to either of the parties. Learned Court below has also committed a grave error in rejecting the application under Order XVII Rule 1 of the Code as a litigant should not be made to suffer for no fault on his part. Without

sufficient reason, the Court below has dismissed the application, hence, it is prayed that the order passed by the Court below 31.10.2015 may kindly be quashed and an opportunity to cross-examine the witnesses may be granted.

4. On behalf of the Respondents, reply/ written objection has been filed wherein it is mentioned that the Court below had granted last opportunity to the Petitioners/ Defendants by imposing the cost of Rs.500/- as also costs imposed on earlier dates. In the said order, the Court below had clearly mentioned that if they failed to deposit all the costs imposed on earlier dates, opportunity of cross-examination of the Plaintiffs' witnesses will be closed. It is also pleaded that as the Petitioners/Defendants have not complied with the order dated 19.10.2015, the suit is pending since 2003 and more than 150 hearings had taken place during the hearing and they are trying to delay the proceedings of the suit on one or other pretext, the Court below has rightly dismissed the said application. Hence, it is prayed that the petition is devoid of merit and is liable to be dismissed.

5. Heard Learned Counsel for the parties.

6. It is submitted on behalf of the Petitioners/Defendants that as per oral communication received from the local Counsel, entire costs have been paid. However, Learned Counsel for the Petitioners is not in a position to state the date of payment of the entire costs. It is also submitted that on 26.10.2015, they have already filed an application to change the date so fixed for hearing i.e. 31.10.2015 as the original Counsel will not be available due to some personal work and no prejudice would be caused if a short opportunity is granted. The reason mentioned by the Petitioners/Defendants for non-availability of the Counsel is *bona fide*. Hence, it is prayed that one more opportunity may be granted to the Petitioners/ Defendants to

cross- examine the witnesses of the Plaintiffs/ Respondents. It is further submitted that earlier on many occasions, the Plaintiffs/ Respondents prayed for adjournment to present their witnesses and it shows that the Defendants/ Petitioners are not alone responsible for the delay. Hence, it is submitted that the petition may be allowed and the relief as sought may be granted.

7. Learned counsel for the Respondents/Plaintiffs would submit that the Petitioners/Defendants have failed to demonstrate any illegality or impropriety in the impugned order dated 31.10.2015 and they have not deposited the costs imposed and thereby they have not complied with the order dated 19.10.2015. Hence, the Court below has rightly closed the opportunity. It is submitted that on six occasions, the cost was imposed upon the Defendants, but the same has not been paid by them. The suit is pending since 2003 and till 31.10.2015, cross examination of the witnesses of the Plaintiffs was not completed. It is further submitted that on 4.4.2013, cost of Rs.100/-, on 17.4.2013, cost of Rs.500/-, on 17.4.2013, cost of Rs.200/-, on 17.6.2015, cost of Rs.1,500/- and lastly on 19.10.2015 cost of Rs.500/- were imposed. All the costs were not paid by the Petitioners/ Defendants to the Plaintiffs. Vide order dated 19.10.2015, the Court below directed the Petitioners/ Defendants to pay entire costs and observed that in case of nonpayment of the costs, the Defendants were not given opportunity for the cross-examination and the opportunity will be closed on the next date. It is further submitted that as directed, the Petitioners/ Defendants have not complied with the order dated 19.10.2015 and also not deposited any cost and as such, the order passed by the Court below dated 31.10.2015 is neither illegal or improper. Hence, it is submitted that as the suit is pending since 2003 and more than 150 hearings had taken place during the hearing and the Petitioners/ Defendants are trying to delay the

proceedings of the suit on one or other pretext, the petition may be dismissed.

8. For the purposes of appreciation of the entire arguments, the petition and its reply, the documents annexed by both the parties are perused.

9. Upon perusal of the order sheet dated 4.4.2013, 17.4.2013, 15.4.2015, 17.6.2015 and 17.7.2015 and 19.10.2015 it reveals that on these six dates on an application filed under Order 17 Rule 1 of the Code the Court granted time by imposing the cost. However, the same was not paid and even the order dated 19.10.2015 has not been complied with by the Petitioners/Defendants.

10. For the sake of arguments, though the Learned counsel was not available on the date of hearing, even then the costs imposed were not paid on 31.10.2015. Whatever orally submitted on behalf of the Petitioners cannot be accepted in absence of any documents or proof and as such the entire costs have been paid on behalf of the Petitioners cannot be accepted as true.

11. Upon consideration of the entire facts, I do not see any illegality or impropriety which requires to invoke jurisdiction of this Court under Article 227 of the Constitution of India for interference in the impugned order.

12. Consequently, the instant petition is dismissed.

Sd/-

Chandra Bhushan Bajpai
Judge