

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.720 of 2015**

1. Javed Ali S/o Akbar Ali, Aged About 42 Years R/o Motor Stand Ward, P O & P S Dhamtari, District Dhamtari (Chhattisgarh)
2. Heena Kausar, W/o Javed Ali, Aged About 39 Years R/o Motor Stand Ward, P O & P S Dhamtari, District Dhamtari (Chhattisgarh)

---- Petitioners/Plaintiffs**Versus**

1. Commissioner, Municipal Corporation Dhamtari District Dhamtari (Chhattisgarh)
2. Mayor, Municipal Corporation Dhamtari, District Dhamtari (Chhattisgarh)
3. Tehsildar (Revenue), Tehsil & District Dhamtari (Chhattisgarh)
4. Sub Divisional Officer (Revenue) Tehsil & District Dhamtari (Chhattisgarh)
5. The Collector, Tehsil & District Dhamtari (Chhattisgarh)
6. Tehsildar (Nazul- Inquiry), Tehsil & District Dhamtari (Chhattisgarh)
7. Ashiq Ali Beg, S/o Late Akbar Ali, Aged About 65 Years R/o Motor Stand Ward, P. O. & P. S. Dhamtari, District Dhamtari (Chhattisgarh) **(Applicant)**

---- Respondents

Shri Adil Minhaj, counsel for the petitioners.
 Shri Dharmesh Shrivastava, counsel for respondents 1 & 2.
 Smt. M. Asha, Panel Lawyer for the State/respondents 3 to 6.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****02.3.2016.**

At the outset, it is submitted on behalf of the petitioners that as the impugned order dated 13.8.2015 is not under the provisions of law as all the applicants have not filed application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (for short 'the Code') before the Court below. On the other hand, the said application was signed on behalf of respondent No.7 only and as per the settled law, the petitioners may not be forced to substitute any person as

plaintiffs. At the most, if any person is necessary party for the proper adjudication of the matter and if he is not agreeing to join as plaintiff, then if the Courts thinks it proper that the applicant is a necessary party, then he may be substituted as defendant though not admitted this fact. With the above illegality and impropriety, it is submitted on behalf of the petitioners that the petition may be disposed of by quashing the order dated 13.8.2015 with liberty to the petitioners that if they file any application afresh as required under law, the Court may consider their prayer as per the provisions of law afresh without being influenced by the impugned order dated 13.8.2015.

2. No any submission made on behalf of the respondents at the time of the hearing.

3. Perused the impugned order dated 13.8.2015, application under Order 1 Rule 10 of the Code and the reply filed on behalf of the petitioners before the trial Court wherein above irregularity and impropriety is pointed out.

4. On due consideration, order dated 13.8.2015 for impleadment of all the applicants as mentioned in the impugned application dated 24.6.2015 (Annexure-P/4) is patently illegal order without consideration of the entire provision of law and facts as every applicant is required to make his signature or thump impression in the application and all are required to instruct their counsel by proper vakalatnama and also if the plaintiffs are not agreeing for impleading them as plaintiffs, the Court ought to have allow those applicants at the most as defendants if they otherwise proved that they are necessary party. In the present matter, the application was signed

only by respondent No.7 Ashiq Ali Beg. No reason for the fact as to why other applicants have not signed or marked their thumb impression as the case may be in the application and no reasons were offered why all of the said applicants have not given their power as required to represent them and also the Court below have not specifically mentioned that as to why despite objection, directed for impleadment of the applicants as plaintiffs in the matter. On perusal of the entire facts which goes to show that as the impugned order suffers illegality and impropriety, it would be appropriate to interfere and correct the said wrong by invoking jurisdiction under Article 227 of the Constitution of India.

5. Consequently, the instant petition is hereby allowed. Order dated 13.8.2015 by the Court below in Civil Suit No.53A/13 is hereby quashed. It is further observed that as and when the applicants file fresh application duly signed and authorised regarding their impleadment as party before the trial Court then, the trial Court is directed to hear the same after affording the opportunity to the other contesting parties and to dispose of the same as per the merits of the said application in accordance with law without being influenced with earlier order dated 13.8.15.

6. Parties may file a copy of this Court before the Court below for compliance. Registrar (Judicial) is also directed to send a copy of this Court to the Court below for information and further compliance. Petition allowed. No order to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE