

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.358 of 2016

1. Sawara Bano @ Sabara Bano, Wd/o Late Shri Jamil Ahmad, aged about 62 years,
2. Shamshad Bano, D/o Late Shri Jamil Ahmad, aged about 37 years,
3. Rubina Bano, D/o Late Shri Jamil Ahmad, aged about 35 years,

All R/o Near Sahara Nursing Home, Ring Road No.2,
Jarahabhatha, Bilaspur, Tahsil & Distt. Bilaspur (C.G.).

(Plaintiffs)
---- Petitioners

Versus

1. Shafik Ahmad Khan, S/o Late Shri Jamil Ahmad, aged about 41 years, R/o Naya Chandaniyapara, Ward No.7, Champa Road, Janjgir, Distt. Janjgir-Champa (C.G.).
2. Vijaylaxmi Saraf, D/o Late Sukhram Prasad Saraf, aged about 44 years, R/o Gandhinagar (Nehru Nagar), Police Station Civil Line, Bilaspur, Tahsil & Distt. Bilaspur (C.G.).
3. Khalil Ahmad, S/o Late Shri Jamil Ahmad, aged about 43 years, R/o Naya Chandaniyapara, Ward No.7, Champa Road, Janjgir, Distt. Janjgir-Champa (C.G.).
4. State of Chhattisgarh, Through the Collector, Bilaspur (C.G.)
(Defendants)
---- Respondents

For Petitioners: Mr. Rishi Rahul Soni, Advocate.

For Respondent No.4: Mr. Avinash Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

23/11/2016

1. The trial Court by its impugned order rejected the application under Order 39 Rule 3 of the CPC finding no merit in the application and further finding that without hearing the defendants, it would not be expedient to grant the ex parte interim injunction against which this

writ petition has been preferred.

2. The trial Court has found it appropriate not to grant ad interim temporary injunction to the plaintiffs without hearing the other side while considering the application under Order 39 Rule 3 of the CPC. The order is purely discretionary in nature, it can be neither held as arbitrary nor capricious.
3. Applying its earlier decision in the matters of **Surya Dev Rai v. Ram Chander Rai**¹ and **Shalini Shyam Shetty v. Rajendra Shankar Patil**², the Supreme Court in the matter of **Sameer Suresh Gupta through PA Holder v. Rahul Kumar Agarwal**³ has held that supervisory jurisdiction under Article 227 of the Constitution of India is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. It has also been held that supervisory jurisdiction or certiorari jurisdiction is not available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby. The power to issue a writ of certiorari and

1 (2003) 6 SCC 675

2 (2010) 8 SCC 329

3 (2013) 9 SCC 374

the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion.

4. In view of the above, the writ petition deserves to be dismissed and is accordingly dismissed. However, the trial Court is directed to expedite the trial as well as hearing on interim applications (if any) and conclude it expeditiously preferably within a period of six months from the date of receipt of a copy of this order. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge