

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 162 of 2016

- Dushyant Kumar Tiwari S/O Late Tribhuwan Prasad Tiwari Aged About 48 Years
R/O Village Bodtara, Tehsil Bhatapara, Station House Officer Bhatapara Rural,
Civil & Revenue District Balod Bazar - Bhatapara, Chhattisgarh

---- Petitioner

Versus

- Sunil Kumar Chandel S/O Balaram Chandel R/O Naipara Ward Bhatapara,
Station House Officer Bhatapara City, Tehsil Bhatapara, District Balod Bazar -
Bhatapara, Chhattisgarh

---- Respondent

For the Petitioner : Shri P.P. Sahu, Advocate for the petitioner.

For the Respondent : Shri K.K. Dewangan, Advocate for the respondent.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order

16/09/2016

1. Heard.
2. The petitioner had filed instant criminal revision against the impugned order dated 08.02.2016 passed by the Additional Sessions Judge, Bhatapara, District Baloda Bazar, Chhattisgarh, in criminal appeal No.H-29/2015 (**Dushyant Kumar Tiwari Vs. Sunil Kumar Chandel**), whereby the appellate Court dismissed the interim application filed by the appellant/petitioner under Section 45 read with Section 73 of the Indian Evidence Act, 1872 (in short 'the Act, 1872'), whereby the appellant/petitioner prayed before the Appellate Court to permit an inquiry by the handwriting expert regarding signature in the alleged compromised deed and also allow to adduce one Shashikant Agrawal as

witness.

3. The Appellate Court vide impugned order dated 08.02.2016 dismissed the said interim application.
4. Perused the application Annexure P-6 also perused the impugned order and the other documents annexed.
5. Heard both the parties.
6. It appears that no application required under the appropriate procedural law has been filed before the Appellate Court. The appellant/petitioner had filed Annexure P-6. The interim application under the substantive law of evidence, this aspect was not considered by the Appellate Court. It was required on behalf of the appellant/petitioner to file appropriate interim application as required under procedural laws and it would be appropriate after affording an opportunity to the respondent to pass an order as required under the law. This Court is of the considered view that by not filing the appropriate application under the relevant procedural law as required and also by not adjudicating the said application, matter requires rehearing on the prayer made before the Appellate Court.
7. Consequently, the order passed by the Appellate Court dated 08.02.2016 requires interference & the same is set aside. The appellant/petitioner is directed to file an interim application afresh under the relevant provisions of procedural laws within 15 days from now before the Appellate Court.
8. Appellate Court is directed to dispose of the same in accordance with law after affording an opportunity to the other party to file his reply and submit the arguments by the parties & decide the said application in accordance with law. Needless to mention that any appreciation or observation made in the impugned order dated 08.02.2016 shall not come in the way and the Appellate Court shall dispose of the said application purely on its merit and under the provisions of law.

9. The petitioner may file a copy of the order before the Court below for further hearing as directed.
10. Registrar (Judicial) is also directed to send a copy of the order through FAX and usual mode immediately.
11. The petition is disposed of.
12. Certified copy within three days.

Sd/-
(Chandra Bhushan Bajpai)
Judge

Nisha