

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Art. 227) No.862 of 2017

Smt. Shaniharo Bai, widow of late Ramjatan, aged about 45 years,
By Caste Kanwar, Occupation Cultivator, R/o Village Medardad,
Mayapur, Tahsil Pratappur, District Surajpur (C.G.)

(Defendant No.1)

---- Petitioner

Versus

1. Smt. Laheshiya Bai, wife of Deepnath, D/o late Jaymangal, aged about 50 years, Caste Kanwar, R/o Village Medardad, Mayapur, Tahsil Pratappur, District Surajpur (C.G.)

(Plaintiff)

2. Babunath, S/o late Ramjatan, aged about 25 years, Caste Kanwar, Occupation Cultivator, R/o Village Medardad, Mayapur, Tahsil Pratappur, District Surajpur (C.G.)

(Defendants)

3. State of Chhattisgarh, through the Collector, Surajpur (C.G.)

---- Respondents

For Petitioner: Mr. D.N. Prajapati, Advocate.

For Respondent No.3/State: -

Mr. Dhiraj Kumar Wankhede, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

23/11/2017

1. Learned counsel for the petitioner would submit that ex parte order against the petitioner was set aside on 31-8-2017, but opportunity to file written statement has not been granted despite application having been filed for the same. Therefore, the impugned order is liable to be set aside.
2. I have heard learned counsel for the petitioner.
3. It is correct to say that ex parte order against the petitioner was set aside by order dated 31-8-2017, therefore, proper opportunity to file

written statement ought to have been given to the defendant as the provisions of Order 8 Rule 1 of the CPC are directory in nature (see **Kailash v. Nanhku and others**¹).

4. In view of the above, the order impugned is set aside subject to payment of cost of Rs.3,000/- to respondent No.1/plaintiff on the next date of hearing. Written statement will be filed positively on 27-11-2017. No further time would be granted. The petitioner will cooperate in the progress of trial. He is entitled to file application for modification.
5. The writ petition is allowed to the extent indicated herein-above.
No order as to cost(s).
6. Certified copy by tomorrow.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

¹ (2005) 4 SCC 480