

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****F.A No.250 of 2016**

Kanhaiyalal Dubey S/o Hardev Prasad Dubey, Aged About 52 Years R/o Ashok Nagar Sarkanda, Tahsil & District Bilaspur, Chhattisgarh .....  
(Plaintiff)

**----Appellant****Versus**

1. Shri Dayal Tiwari S/o Kunjram Tiwari, Aged About 63 Years R/o Ashok Nagar Sarkanda, Near Water Tank Bilaspur, Tahsil And District Bilaspur, Chhattisgarh
2. State Of Chhattisgarh, Through Collector Bilaspur, District Bilaspur, Chhattisgarh
3. Munshiram Jaiswal S/o Late Bhikhari Jaiswal, Aged About 37 Years R/o Ashok Nagar, Chantidih, Tahsil & District- Bilaspur, Chhattisgarh
4. Ashok Kumar Patel S/o Leelaram Patel, Aged About 59 Years R/o Revenue Colony, Seepat Road, Chantidih, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh
5. Prakash Singh Thakur S/o Prahlad Singh Thakur, R/o Tilak Nagar, Chantidih, Bilaspur, Tahsil & District- Bilaspur, Chhattisgarh .....  
(Defendants)

**-----Respondents**


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|----------------------------|------------------------------------|
| For Appellant:             | Shri Ashok Soni, Advocate.         |
| For Respondent No.1:       | None.                              |
| For Respondent No.2/State: | Shri RK Jaiswal, Panel Lawyer.     |
| For Respondent No.3:       | Shri Suresh Kumar Verma, Advocate. |
| For Respondent No.4:       | None.                              |
| For Respondent No.5:       | Shri Vivek Shrivastava, Advocate.  |

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**Single Bench: Hon'ble Shri Sanjay Agrawal, J**  
**Order On Board**

**20.06.2017**

1. With the consent of the parties, the matter is heard finally.
2. This is the Appeal preferred against the order dated 21.3.2016 passed by the Additional District Judge, Bilaspur in Civil Suit No.48-A/2015 by which the trial Court, while exercising the powers enumerated under Order 17 Rule 3

CPC, has dismissed the Plaintiff's suit.

3. The main contention raised by the Plaintiff/Appellant is that the order impugned as passed by the trial Court is not at all sustainable because the same has been passed by referring to earlier order sheets and without considering the circumstances which prevailed on 21.03.2016. Therefore, the order impugned deserves to be set aside and an opportunity be provided to him in order to prove his case.

4. On the other hand, the Respondents have supported the order impugned and submitted that despite of sufficient opportunities being given for producing evidence, the Plaintiff has failed to prove his evidence, therefore, the trial Court has rightly exercised its power under Order 17 Rule 3 CPC by dismissing his claim.

5. I have heard learned Counsel for the parties and perused the entire record carefully.

6. The order sheet dated 23.1.2016 reveals that the matter was listed on 15.02.2016 for filing the written statement of Defendant No.1. On 15.02.2016, Defendant No.1 has submitted his written statement and accordingly the matter was adjourned to 03.03.2016 for framing issues. However, no issues were framed on the said date and it was realized by the trial Court that no material pleadings have been made by the parties and accordingly, directed for listing the matter on 21.03.2016 for Plaintiff's evidence.

7. On 21.03.2016, the Plaintiff has prayed for an adjournment in order to produce his evidence. The said prayer was strongly objected by the Defendants. After considering the matter, the trial Court has observed that since as many as 8 opportunities have already been granted to the Plaintiff for producing his evidence and as sufficient reasons have not been assigned for

leading evidence by him, therefore, while observing as such, the trial Court has dismissed the suit without providing any further opportunity.

8. True, it is, that as many as 8 opportunities as mentioned in the order sheet dated 21.3.2016 were granted earlier but the dismissal of the Plaintiff's claim by referring to earlier order sheets without considering properly the circumstances on which the Plaintiff was unable to produce his evidence on 21.3.2016, would not be held to be proper. Even otherwise, much emphasis has been given with regard to earlier adjournments while dismissing the suit under Order 17 Rule 3 of CPC. The approach as adopted by the trial Court, therefore, cannot be held to be sustainable.

9. In the matter of State Bank of India vs. Chandra Govindji reported in **(2000) 8 Supreme Court Cases 532**, it has been observed by the Supreme Court at para-7 as under:-

“7. In ascertaining whether a party had reasonable opportunity to put forward his case or not, one should not ordinarily go beyond the date on which adjournment is sought for. The earlier adjournment, if any, granted would certainly be for reasonable grounds and that aspect need not be once again examined if on the date on which adjournment is sought for the party concerned has a reasonable ground. The mere fact that in the past adjournments had been sought for would not be of any materiality. If the adjournment had been sought for on flimsy grounds the same would have been rejected. Therefore, in our view, the High Court as well as the learned District Judge and the Rent Controller have all missed the essence of the matter.”

10. In view of the foregoing discussions based upon the aforesaid principles, the order impugned deserves to be and is hereby set aside by providing a last opportunity to the Plaintiff to produce his evidence. The parties are directed to appear before the trial Court on 22.08.2017. On the said date, the trial Court shall fix the case for his evidence. The Appeal is

accordingly allowed with the said observation. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)  
**JUDGE**

Priya