

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 359 of 2017**

Raghvendra Das Vaishnav S/o Late Narendra Das Vaishnav, Aged About 43 Years R/o A1, Anushtha Residency, Junwani Khamariya Road, Bhilai, District Durg Chhattisgarh.

---- Petitioner**Versus**

1. Premlal Sahu S/o Late Bodhan Sahu Aged About 70 Years R/o Village Junwani, Tehsil Durg, District Durg, Chhattisgarh.
2. State Of Chhattisgarh, Through Collector, District Durg (Chhattisgarh)
3. Deputy Registrar, Registrars Office, District Durg (Chhattisgarh)
4. Deputy Director, Town And Village Investment Department, District Panchayat Bhavan, District Durg (Chhattisgarh)
5. Tehsildar, District Durg Chhattisgarh.
6. Devesh Dakaliya S/o Naresh Dakaliya Aged About 31 Years R/o Sadar Bazar Rajnandgaon Tahsil & District Rajnandgaon (Chhattisgarh)
7. Naresh Kalaliya S/o Jeevanchand Dakaliya Aged About 56 Years R/o Sadar Bazar Rajnandgaon Tahsil & District Rajnandgaon (Chhattisgarh)

---- Respondents

For Petitioners : Shri Alok Bakshi, Advocate.
 For Respondent No. 1 : Shri Goutam Khetrapal, Advocate.
 For Respondent No. 3 : Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****10/10/2017**

Heard.

(1) By the impugned order dated 19.04.2017, petitioner/plaintiff's right to examine his witnesses has been closed, against which instant writ petition has been filed questioning the same.

(2) Learned counsel for the petitioner submits that the order impugned is bad and unsustainable in law as no reasonable opportunity of hearing

was afforded to the petitioner for examination of his witnesses and, therefore, the impugned order is liable to be set aside.

(3) Per contra, counsel for the respondents opposes the writ petition.

(4) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove, and also gone through the record with utmost circumspection.

(5) The suit has been filed by the petitioner/plaintiff before the trial Court for specific performance of the contract in the month of July, 2008. By order dated 10.03.2017, the trial Court had granted last opportunity to the petitioner to adduce their evidence subject to payment of cost of Rs.1,000/- stating that since 9.4.2015 the case was fixed for evidence of the plaintiff's witnesses but the plaintiff has not examined any witness till date. The case was again fixed for evidence of the plaintiff's witnesses on 19.04.2017, on that day the plaintiff neither produced himself for cross-examination nor filed any affidavit under Order 18 Rule 4 of the CPC of other witnesses and, thus, the trial Court, finding no option, fixed the case for cross-examination of the plaintiff on 15.05.2017. This time again, plaintiff committed default and could not appear right in time and ultimately his right to adduce evidence was closed by the trial Court by its order dated 06.09.2017, which was challenged by the petitioner before this Court in W.P. (227) No. 716/2017.

(6) This Court, vide its order dated 26.09.2017, taken a lenient view of the matter and directed the trial Court to allow the plaintiff to be cross-examined by the defendants subject to payment of cost of Rs.5,000/-.

(7) The aforesaid narration of the facts clearly demonstrates that petitioner is not co-operating with the trial and seeking unnecessary

adjournment and despite last opportunity to adduce evidence, did not produce his witnesses before the trial Court and, therefore, the plaintiff's right to examine other witnesses except plaintiff himself has rightly been closed by the trial Court. I do not find any illegality in the impugned order warranting interference by this Court under Article 227 of the Constitution of India.

(8) Accordingly, the writ petition being devoid of substance, is liable to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-