

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 135 of 2017**

- Paras Vanaspati Pvt. Ltd. A Company Registered Under The Provisions Of Companies Act, 1956 Having Its Registered Office At 21/360, Ganj Para Raipur (Chhattisgarh) 492001 Through Its Director Hemendra Sangoi, S/o Shri Shantilal Sangoi, Aged About 34 Years, R/o 354, Samta Colony, Raipur (Chhattisgarh)

---- Petitioner**Versus**

1. Chhattisgarh State Minor Forest Produce (T&D) Co-Operative Federation Limited Having Its Registered Office At A-25, V I P Estate, Khamardih, Shankar Nagar, Raipur (Chhattisgarh)
2. Chhattisgarh State Minor Forest Produce (T & D) Co-Operative Federation Limited, Unit 6, Upperghat, District Union, Jashpur Nagar, Chhattisgarh Through Its Managing Director
3. The State Of Chhattisgarh, Through The Principal Secretary, Department Of Forest, D. K. S. Bhavan (Now Mahanadi Bhawan), Mantralaya, Naya Raipur, District Raipur (Chhattisgarh)

---- Respondents

For Petitioner	:	Mr. Adil Minhaj, Advocate
For Respondents No.1 & 2	:	Ms. Pushpa Dwivedi, Advocate on behalf of Mr. A.S. Kachhawaha, Advocate
For State	:	Mr. S.P. Kale, Dy. Advocate General

Hon'ble Shri Justice P. Sam Koshy**Order on Board****17.02.2017**

1. The present Petition has been filed under Section 227 of the Constitution of India assailing the order dated 07.01.2017 passed by the Additional District Judge (FTC) Jashpur (C.G.) in Civil Suit No. 2-A/2014 whereby an application filed by the Petitioner under Order 16 Rule 1(3) of the C.P.C. has been rejected.

2. A brief fact of the case is that the Petitioner who is plaintiff before the Court below has filed a Civil Suit for declaration as well as refund of the security amount against the Respondent Defendants. The stage of the suit is of the plaintiff's evidence. It is said that only witness i.e. Vijay Sangoi has been examined on behalf of the petitioner plaintiff.
3. Learned Counsel for the Petitioner submits that on an earlier occasion the Petitioner had submitted a list of 13 witnesses to be examined which was allowed by the Court below. In due course of time when the evidence of Vijay Sangoi, who is one of the directors of the Company was being recorded they felt it necessary to examine 6 other official witnesses including another Director of the company Hemendra Sangoi and therefore an application under Order 16 Rule 1(3) of the C.P.C. was moved. It is this application which has been rejected by the Court below. He further submits that the Court below has rejected the application only on the ground that the Petitioner has already filed affidavit of one of the Directors Vijay Sangoi and for whose cross-examination the matter has been listed for, therefore the necessity of examining the another Director does not arise and the relevancy of the other witnesses which have been cited in the application has also not been explained properly by the Plaintiff. In addition the Court below has taken a view that the said application under Order 16 Rule 1(3) of the CPC has been also filed with an intention of delaying tactics.
4. Learned Counsel for Respondents No. 1 & 2 submits that the

Court below has taken into consideration the merits of the application and has reached to the conclusion that no justified reasons have been assigned seeking for calling of these witnesses.

5. The same stand has also been taken by the learned Counsel for the State opposing the present Petition.
6. On a perusal of the record, also taking into consideration the contentions put forth on either side particularly the submission made by the Counsel for the Petitioner that he intends to examine only one witness Hemendra Sangoi foregoing all the 13 witnesses who were cited as witnesses earlier. That he further now wants only one witness out of total 6 witnesses sought for in the application under Order 16 Rule 1(3) of the CPC i.e. Hemendra Sangoi who is also one of the Directors of the Company to be examined. Thus in addition to the witness by the Plaintiff i.e. Vijay Sangoi he intends to examine one more Director of the Company i.e. Hemendra Sangoi and then he shall close Plaintiff evidence. Further he shall not examine any one from the 13 witnesses earlier cited or the other 5 whose name appeared in the application under Section 16 Rule 1(3) of the CPC.
7. So far as the contention of the Respondents that no cogent reason has been explained is not acceptable for the reason that the Application under Order 16 Rule 1(3) itself shows the reasons and explanation for calling of each of the witnesses.
8. Now when the Plaintiff himself having made submission before

this Court that he does not intend to examine witnesses except for Hemendra Sangoi, therefore the apprehension of the Court below that the Petitioner plaintiff is adopting delay tactics also gets demolished.

9. Thus, this Court is of the opinion that it is a fit case for setting aside the impugned order dated 07.01.2017 to the extent that the Petitioner plaintiff shall now be permitted to examine only one of the witnesses cited in the said application i.e. Hemendra Sangoi for which he shall positively by the next date of hearing file affidavit under Order 18 Rule 4 of the C.P.C. in addition to the evidence of Vijay Sangoi, whose evidence is going on.
10. With the aforesaid observations the present Writ Petition stands allowed in part and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE