

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 756 of 2016

- Bholaram Satnami S/o Late Birjhu Satnami, Aged About 34 Years R/o Post Kendri, Tehsil Abhanpur, District Raipur (Chhattisgarh), Through Power Of Attorney Iqbal Meman S/o Late Abdul Razzak Meman, R/o Santoshi Nagar, Raipur, (Chhattisgarh)

---- Petitioner/Plaintiff

Versus

1. Sandip Agrawal S/o Mukundlal Agrwal, Village & Post Kendri, The. Abhanpur, District Raipur, (Chhattisgarh)
2. State Of Chhattisgarh, Through Collector, Raipur, (Chhattisgarh)

---- Respondents/defendants

For Petitioner	:	Shri Vikram Singh, Advocate
For Respondent No.2	:	Shri Rahul Tamaskar, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

03/01/2017

1. Heard on admission.
2. Challenge in this petition filed under Article 227 of the Constitution of India is to the order dated 5.10.2016 (Annexure P-2) passed by the Court below rejecting the notice as filed by the petitioner under Order 12 Rule 5 of the Code of Civil Procedure, 1908 (for short 'CPC').
3. Facts of the case, in brief, are that the petitioner filed a civil suit against the respondents herein for declaration and permanent injunction. During the pendency of said civil suit, on 12.1.2016 the petitioner gave notice under Order 12 Rule 5 CPC to the respondents herein for admitting certain facts. The trial Court after hearing the parties in the matter rejected the said notice vide impugned order on the ground that the same

has not been filed in the form prescribed under Rule 5 of Order 12 CPC.

4. Learned counsel for the petitioner submits that the respondent No.1 has not advanced any argument on the said notice, whereas respondent No.2 has admitted the facts mentioned in the notice under Order 12 Rule 5 CPC. In these circumstances, the trial Court has erred in law in rejecting the notice given under Order 12 Rule 5 CPC to admit certain facts.
5. On the other hand, supporting the impugned order it has been argued by counsel for the respondent No.2-State that the order impugned is in accordance with law.
6. I have heard learned counsel for the parties and perused the impugned order.
7. Rule 5 of Order 12 CPC envisages that a notice to admit facts shall be in Form No.10 in Appendix C, and admission of facts shall be in Form No.11 in Appendix C, with such variations as circumstances may require. A glance of notice given by the petitioner under Order 12 Rule 5 reveals that it is not in the form as prescribed under Rule 5 and being so, the trial Court has not committed any illegality or infirmity in rejecting the same warranting interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India, which can only be exercised when the inferior courts act arbitrarily or act in excess of jurisdiction vested in them or fail to exercise jurisdiction vested in them or act in violation of the principles of natural justice, which is not the position in the case in hand.
8. In the result, the petition being devoid of merit is liable to be dismissed and is hereby dismissed.

Sd/-
(Pritinker Diwaker)
Judge