

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 28 of 2017**

1. Krishna Nand Singh S/o Shri R. B. Singh, Aged About 36 Years
2. Smt. Shikha Singh, W/o Krishna Nand Singh, Aged About 33 Years
Both R/o Kedarpur, Near Water Tank, Ambikapur, P.S. & Tahsil Ambikapur, District Surguja, (Chhattisgarh).

---- Petitioners**Versus**

1. Atul Dubey S/o Vijay Nath Dubey, Aged About 38 Years R/o Pratappur Road, Ambikapur, District Surguja, (Chhattisgarh).
2. Meena Dubey, W/o Atul Dubey, R/o Mahamrityuinjay Bhawan, M.I.P. 3/12/134, Nehru Nagar, Riwa (Madhya Pradesh).
3. The State of Chhattisgarh, Through: The Collector, Surguja, District Surguja (Chhattisgarh).

---- Respondents

For Petitioners	:	Shri SC Verma, Advocate.
For Respondents No.1&2	:	Shri Sunil Tripathi, Advocate.
For Respondent/State	:	Shri SP Kale, Deputy Advocate General.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****06/02/2017**

1. The present petition under Article 227 of the Constitution of India has been preferred against the order dated 22.12.2016 passed by the 5th Additional District Judge, Ambikapur, in Civil Suit No.26-A/2011. Vide the said impugned order, the court below has rejected the prayer of the petitioners-plaintiffs seeking time for filing reply/objection to the counter case filed by the respondents-defendants in the present case.
2. The ground for rejection and closing the right for filing reply/objection of the petitioners was on account of order passed by this court in Writ Petition (227) No.542/2016, decided on 02.11.2016, whereby this court had directed the trial court to decide the suit on or before 10th March,

2017.

3. In the instant case, from the facts which has been narrated and which has been reflected from the order sheet of the earlier litigation, the suit was originally filed by the plaintiffs on 23.01.2010 and the written statement were also filed on 22.03.2010 and since then the matter is pending consideration before the trial court. Meanwhile, both the parties seems to have filed amendment applications. One application preferred by the defendants were allowed whereas, one preferred by the plaintiffs got rejected. Against said rejection of the application, Writ Petition (227) No.542 of 2016 was filed before this court. The said writ petition was allowed on 02.11.2016 allowing the plaintiffs to amend the plaint. This court also directed to decide the suit within three months i.e. up to 10.03.2017.
4. Subsequently, the plaintiffs as well as the defendants both have amended the plaint as well as written statement. Meanwhile, the defendants have also filed a counter case on 15.11.2016 which came up for hearing on 07.12.2016 and admitted on the same day and was taken on record. The plaintiffs were directed to file their reply within seven days i.e. on 14.12.2016, on which date, the plaintiffs took time, the matter was adjourned for 22.12.2016. on which date also, since the reply/objection to the counter case was not filed, the prayer for further time was rejected and the right of filing of same got closed vide the impugned order.
5. Learned counsel appearing for the petitioners-plaintiffs submits that if one more opportunity is granted to the plaintiffs, they shall positively file their reply/objection to the counter case filed by the defendants, and thereafter the matter may be proceeded to be decided on its merit.

According to him, if an opportunity is not granted to the plaintiffs, the same would be detrimental to them in the final outcome of the civil suit itself.

6. The said prayer of the plaintiffs is strongly opposed by the counsel for the respondents-defendants and submits that they were granted two opportunities by the court below, yet they failed to file the same which itself is sufficient indication that the plaintiffs were adopting delaying tactic.
7. Having heard the rival contentions put forth on either side, in the interest of justice, this court feels that since the plaintiffs were granted only two opportunities i.e. in the short span of just seven days time for filing reply/objection to the counter case, one more opportunity would meet the ends of justice for doing the same.
8. Accordingly, the impugned order dated 22.12.2016 is set aside to the extent where the right of filing of reply/objection to the counter case have been closed by the court below. The plaintiffs-petitioners are directed to file their reply on counter case on or before 9.02.2017 and thereafter the court below shall proceed further with the case keeping in mind the order passed by this court on 02.11.2016 in WP(227) No.542 of 2016.
9. The writ petition with the aforesaid observations stands allowed and disposed of.
10. Certified copy today itself.

Sd/-
(P.Sam Koshy)
Judge