

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR.**Writ Appeal No. 381 of 2017***(Arising out of order dated 25.07.2017 in W.P. (C) No. 2038 of 2017 of the learned Single Judge)*

- M/s Kailash Medical Stores Through Proprietor Smt. Anita Sakhuja, W/o Shri R.K. Sakhuja, Aged About 54 Years, R/o Khaparganj, Bilaspur, District Bilaspur Chhattisgarh.

---- Appellant**Versus**

1. State Of Chhattisgarh Through Secretary, Government Of Chhattisgarh, Department Of Health And Family Welfare, D K S Bhawan, Mantralaya, Raipur District Raipur Chhattisgarh.
2. Director, Directorate Of Health Services, Old Nurses Hostel, Behind D K S Bhawan, Raipur, District Raipur Chhattisgarh.
3. Civil Surgeon-Cum-Hospital Superintendent, District Hospital, Near Bus Stand, Beside Navbharat, Bilaspur Chhattisgarh.

---- Respondents

For Appellant	: Shri Rahim Ubwani, Advocate.
For Respondents/State	: Shri U.N.S. Deo, Government Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge.

Order on Board**Per Thottathil B. Radhakrishnan, Chief Justice****11/10/2017**

1. The writ petitioner is the Appellant. We have heard the learned Counsel for the Appellant and the learned Government Advocate.
2. The Petitioner supplied medicines for consumption through the Government hospitals. On non-payment of the amounts due for such supply of medicines, the Petitioner filed WP(C) No. 1109 of 2015. That was decided as per order dated 22.02.2017, whereby there was a direction to pay the balance amounts due. Leaving that judgment there, the Petitioner has filed WP(C) No. 2038 of 2017 seeking a direction to pay interest @ 18% per annum on the amounts which have already been paid. The learned Single dismissed the writ petition holding that no such relief was claimed in the earlier writ petition.

3. Learned Counsel for the Appellant may be justified in saying that there is error in the impugned judgment inasmuch as the learned Single Judge failed to note that in the earlier writ petition, a specific relief was sought for payment of interest @ 18% per annum. But the fact of the matter remains that even on the face of such a specific prayer in the earlier writ petition, no such relief was granted in that round. When a relief is claimed and not granted, it has to be treated as refused, even if it is not specifically refused on the face of the judgment. This is the settled position of law. If a relief that is due is not claimed, public policy doctrines embedded in Order II Rule 2 of the CPC will stare at such a litigant. In the instant case, such a claim having been raised in the earlier round in the form of relief No. 10 (ii), it is a case where the relief was claimed but has been refused by not granting it. That way, the issue would fall as one which cannot be independently raised in a subsequent litigation. The principles of constructive *res judicata* also would deny the Appellant/Petitioner a subsequent opportunity to raise the issue of interest *de novo*.
4. Therefore, though for reasons different what has been stated by the learned Single Judge in the impugned judgment, this writ appeal fails.
5. In the result, this writ appeal is dismissed.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Sharad Kumar Gupta)
JUDGE