

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 36 of 2018

Sukh Vishwas, S/o. Late Sharad Vishwas, Aged About 34 Years, R/o. Village Nehrunagar (Digma) Tahsil Ambikapur, District Surguja, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through Collector Surguja, Ambikapur, District Surguja, Chhattisgarh.
2. Tahsildar Ambikapur, Tahsil Office Ambikapur, District Surguja, Chhattisgarh.
3. Engineering Collage, Through Director, Technical Education, Lakhanpur, Police Station & Post Office Lakhanpur, District Surguja, Chhattisgarh.

---- Respondents

For Petitioner	:	Ms. Priyanka Mehta, Advocate
For State	:	Ms. Astha Shukla, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

11.01.2018

Heard

1. This petition is against the order dated 13.12.2017 whereby an application for extension of time in respect of the stay granted in favour of the petitioner was dismissed.
2. Learned counsel for the petitioner would submit that initially an injunction of stay was granted in favour of the plaintiff/petitioner on 25.08.2014 wherein the application under Order 39 Rule 1 & 2 of C.P.C. was allowed and it was directed that till the final disposal of the suit or within one year, whichever is earlier, the plaintiff shall not be dispossessed from the suit property. Thereafter, it was extended on 21.10.2016 again for one year on the similar conditions; however, by the order dated 13.12.2017, the Court has refused to extend the stay after the expiry of one year on the

ground holding that the plaintiff is not interested to prosecute his suit or has not filed the affidavit. She further submits that the Court below has failed to see the record and in the mechanical manner, the order has been passed though the affidavits were on record, as it would be evident from the order sheet dated 17.08.2015 and subsequently on 27.02.2016 and 11.03.2016. Thereby all the affidavits were on record and on the erroneous finding, stay has not been extended. It is further contended that it was at the behest of the defendants/respondents the date was extended from time to time and even the right to file the written statement of the defendant No.1 & 2 was closed. Consequently, the delay attributed cannot be held towards the petitioner and the stay granted under Order 39 rule 1 & 2 should have been extended taking into the facts of this case.

3. Perused the entire order sheets. The order dated 13.12.2017 records that the plaintiff has not filed affidavit of the witness and only wanted to protract the trial, consequently, the application moved under Section 151 of C.P.C. dated 05.12.2017 to extend the stay was dismissed. The order sheet further records that on 27.02.2016 only the statement of one Dilbandhu Goldar was on record but the same was filed after the exparte of the defendant. Eventually it was held that the plaintiff has not cooperated to get the case decided and has not filed affidavit, consequently the time prayed for extension of stay was dismissed.
4. Perused the entire order sheets of the Court below. Perusal of the order sheet would show that on 17.08.2015 right to file written statement of defendant was closed. Thereafter the right to file written statement was allowed, however, when the written

statement was not filed, again it was closed on 12.05.2016. Again the application was filed to accept the written statement by the defendant but the same was disallowed on 11.06.2017. The order sheet further records that on 17.08.2015 an affidavit of the witness Sukh Vishwas was filed under Order 18 Rule 4 of C.P.C. Subsequent order sheet shows that on 27.02.2016 another affidavit of Dilbandhu Goldar was filed and the order sheet dated 11.03.2016 further shows that another affidavit of Dhiraj Mandal was filed. The original stay order dated 25.08.2014 was allowed in favour of the petitioner/plaintiff after evaluating the fact that prima facie case and the balance of convenience and irreparable loss lies in favour of the plaintiff to grant the injunction. Such order was quantified for a limited period of one year or till the final disposal of the suit, whichever is earlier. Subsequently, it was extended on 21.10.2016. The order dated 21.10.2016 has reiterated the earlier ground of grant of injunction and accordingly stay was extended. When the suit was not decided within one year, an application for extension of stay was filed, but the same was dismissed by holding that the plaintiff is not interested to prosecute his suit and further by observing that only one of the affidavit is filed.

5. Perusal of the entire order sheet would reflect sorry state of affair and the conduct of the Civil Judge while deciding the case. It appears that without going through the records, the orders have been passed. The order sheet dated 17.08.2015 and thereafter 27.02.2016 and 11.03.2016 have been totally given a go bye and ignored. Thereby, this can be very well assumed that the Court below without perusal of the record in mechanical manner has passed the order when the affidavits were already on record. It reflects that the plaintiff has performed his part to adduce

evidence, therefore, the finding which is arrived at by the Court below is completely erroneous and faulty. The Courts are expected to look into entire case file before giving such finding and should refrain themselves to pass such order casually which affect the right of the person or litigants before him. If such course are adopted it erodes the confidence of the public and litigants over the Court. In view of the facts existing, the order dated 13.12.2017 is set aside and it is directed that the plaintiff shall not be dispossessed from the suit premises by the defendants or their agent or servant till final adjudication of the Civil Suit bearing No.98A/2014.

6. With such observation, the petition stands allowed.

Sd/-
(Goutam Bhaduri)
Judge