

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(227) No. 17 of 2018**

Ajit Kumar Punj, Aged About 68 (60) Yrs, S/o. Late Shri Amichand Punj
 Press – Reporter, R/o. Ward No. - 05 Main Road Bagbahara 493449, Tah.
 Bagbahara, District Mahasamund, Chhattisgarh.....(Defendant No. 1)

---- Petitioner**Versus**

1. Prakash Agarwal, Aged About 55 (47) Yrs, S/o. Late Shri Shankar
 Agarwal, R/o. Bagbahara, District Mahasamund, Chhattisgarh
(Plaintiff No. 1)
2. Naresh Chandrakar, Aged About 50 (42) Yrs, S/o. Shri G.L. Chandrakar,
 R/o. Bagbahara, District Mahasamund, Chhattisgarh
(Plaintiff No. 2)
3. State Of Chhattisgarh, Through Collector, Mahasamund, Chhattisgarh.
(Defendant No. 2)

---- Respondents

 For Petitioner : Mr. P.K.C.Tiwari, Sr. Advocate with Mr.
 Ashutosh Trivedi, Advocate

For State/Resp.No.3 : Mr. S.K.Mishra, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****05.01.2018**

Since the certified copy of Annexure P-1 is filed, the default as
 pointed out by the Registry in this case is ignored.

Heard

1. The instant petition is primarily against the order dated 08.11.2017
 wherein the prayer to lead evidence on behalf of the defendant
 was closed.

2. Learned counsel for the petitioner would submit that on the different dates, the case was fixed for evidence and the case was adjourned on some pretext or other either at the behest of the plaintiff or the petitioner/defendant. Eventually when the case was fixed for evidence on 08.11.2017 though summons were paid to the witness they did not appear though the process fees was paid, for no fault of the petitioner, the right to lead evidence of petitioner was closed. It is submitted that if the process are paid to the witness then to procure the attendance of the witness, it is duty of the Court to procure their attendance and it cannot be ordered that the petitioner should produced his witness. He further submits a last opportunity may be granted to the defendant to lead his evidence, as he has already been examined but the cross-examination could not be completed and he may be allowed to be cross-examined and the witness may be allowed to be adduced.
3. Perused the order sheets wherein it shows that the case was fixed for defence witness on 23.09.2015 first and thereafter in the intervening dates either at the behest of the plaintiff or at the behest of the defendant the case was adjourned. Though the statement under Order 18 Rule 4 of C.P.C. of the defendant Ajit Kumar Punj was placed on record earlier, however he could not be cross-examined. The said procedure continued for different dates after the examination in chief of defendant. The order sheet of the date of evidence records that the Station House Officer & Tahsildar Bagbahara were served with notice to adduce evidence but were not present, whereas in respect of the other witnesses service report was not received. However, the right to evidence of defendant was eventually closed.

4. The earlier order sheets show that at some point of time the defendant was not cross-examined at the behest of the plaintiff, further examination was stopped. Subsequently on 21.12.2016 the defendant was present but at the request of the plaintiff, the case was adjourned and it was directed that the defendant shall produced himself on the next date and the date was fixed for 23.01.2017. On 23.01.2017 the date was obtained by the defendant and joint request was made by the plaintiff & defendant. Consequently, the case was adjourned to another date and on 28.02.2017 the cross examination of the defendant started but it could not be completed as the Court time was over. The case was again fixed for 19.04.2017. On 19.04.2017 the date was obtained by the plaintiff on the ground that the counsel was not well and the case was fixed for evidence of the defendant on 21.06.2017. Subsequently, on 17.08.2017 again the case was fixed for defence evidence as in the meanwhile the Court was on leave, thereafter, the case was again fixed for defence on 26.09.2017. Thereafter on 26.09.2017 the witnesses were not present on behalf of the defence and adjournment was sought for and the case was adjourned to 11.10.2017. Then at the request of the counsel for the defence, the case was fixed for 13.10.2017. On 13.10.2017 the defence witness Ajit Kumar was present, however, date was obtained on the medical ground by the counsel and the case was fixed for 31.10.2017 for defence witness. On 31.10.2017 being a local holiday, the case was taken on 01.11.2017 and it was directed that the witness should be kept present on the next date on 08.11.2017. In the meanwhile, certain applications were filed for change of date by the defence but the same was dismissed and the case was eventually taken on 08.11.2017. On 08.11.2017

the defence witness were absent and adjournment was prayed by the defendant/petitioner was refused and the right of the evidence was closed and the case was fixed for final argument on 14.11.2017 and in the intervening period on 13.11.2017, the petitioner/defendant has filed an application to lead further evidence and the same was fixed for 28.11.2017. On 11.12.2017 the orders were passed and the prayer made by the defendant to adduce further evidence was dismissed.

5. Therefore, perusal of the order sheet would show that at certain point of time either at the behest of the defendant or at the behest of the plaintiffs, the dates were obtained. It is also true, the order sheet as reflects that at certain point of time though the defendant was present but the date was obtained by the plaintiffs, therefore, adjournment of the case from time to time was either at the behest of the plaintiff or that of defendants for some reason or others. Considering the totality of case, it appears that in the intermittent period, the defendant appeared before Court and for the fault of the counsel, the cross examination could not be completed. The parties cannot be condemned for fault of counsels, as if the defendant is not examined and cross-examined then his statement may not be acceptable in evidence. Considering the same, I am of the opinion that one opportunity is given to the defendant/petitioner to get himself examined before the Court on the next date of hearing and further the defendant/petitioner shall be entitled to summon the Tahsildar Bagbahara and Station House Officer Bagbahara, Advocate Harish Yadav & Omprakash Shukla who are local residents and may call them as witness to adduce evidence alongwith him or may summon them by Court. The trial Court may fix the date for evidence by giving reasonable time so

that the witnesses are served and if deems necessary may procure the attendance of the witness by coercive method. The trial Court further be obliged to decide the case within a further period of 45 days from receipt of a copy of this order.

6. With such observation the petition stands disposed of.

Sd/-
(Goutam Bhaduri)
Judge

Ashok