

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(227) No. 11 of 2018**

1. Guharam Son of Shivdhan Kanwar, Aged About 55 Years
 2. Gopal, Son of Shivdhan, Aged About 60 Years,
- both are by Caste Gond, R/o Village Mandanpur, Tahsil Kharsiya, District Raigarh, Chhattisgarh.

---- Petitioners**Versus**

1. Ramdas, Son of Daulatram Kalar
 2. Maniram(Died) Through Lrs.
 - A. Ramkumar, Son of Late Maniram
 - B. Rajkumar, Son of Late Maniram,
 - C. Devendra, Son of Late Maniram,
 - D. Laxmi, D/o Late Maniram
 - E. Vimla, D/o Late Maniram,
 - F. Chandanmati, W/o Late Maniram
 3. Lalan Prasad, Son of Daulatram,
 4. Rameshwar Prasad, Son of Daulatram
- All are R/o Village Mandanpur, Tahsil Kharsiya, District Raigarh, Chhattisgarh.
5. Chamru Son of Usatram(Died)
 - A. Natthuram, Son of Late Chamru
 - B. Vijay Kumar, Son of Late Chamru
 - C. Babulal, Son of Late Chamru
 - D. Shakharam, Son of Late Chamru,
- R/o Village Bansmuda, Tahsil Kharsiya, District Raigarh, Chhattisgarh.
6. State Of Chhattisgarh, Through District Collector, Raigarh, Chhattisgarh.

---- Respondents

For petitioners - Shri R.S. Patel, Advocate.
 For respondent/State – Shri S.R.J. Jaiswal, PL.

Hon'ble Shri Justice Goutam Bhaduri**Order****08/01/2018**

Heard.

1. Instant petition is against the order dated 14/11/2017 whereby the Additional Commissioner, Bilaspur in Revision No.04/अ-23/2017-18 has passed the order against the petitioners who were respondents No.1

and 2.

2. Learned counsel for the petitioners would submit that the revision was preferred in the year 1998 by Ramdas and legal heirs of Maniram and Lalan Prasad and Rameshwar Prasad wherein eventually notices were issued to the petitioners/respondents for appearance on 12/09/2017. Subsequently, when they appeared on 12/09/2017 date was given on 14/12/2017, however on 12/09/2017 no order sheet was open. All of a sudden in the meanwhile without any notice on 10/10/2017 an application moved under Order 22 Rule 3 CPC and an application under Order 22 Rule 4 CPC was entertained by the Additional Commissioner and case was fixed for 7/11/2017. Subsequently, the case was heard and final order was passed. He further submits that even application under Order 22 Rule 4 CPC for death of one Chamru was informed by the legal heirs on 12/02/2001, however no application was moved within prescribed period of limitation and eventually an application was moved on 10/10/2017 which was entertained at the back of the petitioners/respondents and without the notice, case was heard.

3. Perused the order dated 14/11/2017 which was passed on a revision filed by the Ramdas and legal heirs of Maniram, Lalan Prasad and Rameshwar Prasad. The petitioners No.1 and 2 herein were respondents No.1 and 2. Perusal of the record prima facie would show that in the copy of the notice date of appearance was given to the petitioners was of 12/09/2017. Order sheet filed in this case of 13/06/2017 would show that case was fixed for 12/09/2017 as per notice issued to the petitioners. Subsequently, on the bottom of it date of 14/12/2017 is written. Order sheet shows that on 10/10/2017 at the back of the petitioners, case was taken up and the order was passed on 14/11/2017, preponing the date. Order sheet would show that case was not taken up on 12/09/2017 for which the petitioners/respondents were asked to be heard.

4. Further more, record would show that intimation of the death of one of the respondent No.3 Chamru was given by the legal heirs on 12/02/2001. However, no application was moved within time and it was only on 10/10/2017 the application was moved to bring the legal heirs of the deceased Chamru which was allowed by the Additional Commissioner by preponing the date without looking into the fact that whether such application was barred by time or not.

5. Taking into totality of the facts, it appears that gross misconceived conduct in discharge of judicial duty has been committed by the Additional Commissioner. Notice though shows that date for appearance was fixed for 12/09/2017, however order sheet of the case shows that case was not taken up on 12/09/2017 and on 13/06/2017 order sheet shows that case was fixed for 12/09/2017 and thereafter on the bottom the date of 14/12/2017 has been given. Subsequently, instead of taking up the case on the date, case was taken up in the intermittent date by preponing for the reasons best known to the Additional Commissioner. There is no reason as to why such case was taken up earlier to its date fixed and no clarification is on record as to whether it was at the behest of the parties after hearing them or not. Order sheet only reflects that the Additional Commissioner has taken up the case of his own.

6. Such conduct of the Additional Commissioner while holding the court is highly deprecated as such conduct on the part of the officer erode the confidence of the general people who are seeking justice/redressal before the quasi judicial officer. Record would further show that neither Commissioner has applied his mind to allow condonation the delay to bring legal heirs though it appears to have been informed on 12/02/2001. After period of 17 years same was allowed that too without any opportunity of hearing to the objecting parties.

7. Considering the totality of the case, order dated 14/11/2017 and

consequently the application to allow to bring the legal heirs on the basis of the application dated 10/10/2017 and the order sheet dated 10/10/2017 cannot be sustained and both the orders are set aside.

8. The case is remanded back to the court of Additional Commissioner for hearing afresh on merits de novo. It is further made clear that the Additional Commissioner is expected to follow the rule of law of hearing to both the parties as the same cannot be decided on the whims and fancy of the officer while holding an judicial/quasi judicial office.

9. With such observation, the petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE