

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 76 of 2018**

- Smt. Rampyari Awasthi W/o Chaturbhuj Awasthi, Aged About 72 Years R/o Village Kharora, Tahsil Tilda, District Raipur (Chhattisgarh) Through General Power Of Attorney Holder Mohd. Akhtar, S/o Late Mohd. Ayub, Aged About 37 Years, R/o Raja Talab, Raipur, Tahsil And District Raipur (Chhattisgarh),

---- Petitioner**Versus**

1. Chandra Mohan Tandan S/o Late Chandraprakash Tandan,
2. Sanjay Tandan S/o Late Chandraprakash Tandan,

Both are R/o Bramhanpara, Raipur, Tahsil And District Raipur (Chhattisgarh).....(Plaintiffs),
3. Vijay Tandan S/o Late Chandra Prakash Tandan, R/o Geetanjali Nagar, Raipur, District Raipur (Chhattisgarh)
4. State of Chhattisgarh Through Collector, Raipur, Tahsil And District Raipur (Chhattisgarh).....(Defendant No. 2 And 3),

---- Respondents

For Petitioner	:	Shri M.K. Bhaduri, Advocate
For Respondent -State	:	Shri S.K. Mishra, PL for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****24/01/2018**

1. Heard.
2. The instant petition is against the order dated 13.12.2017, whereby an application under Order 9 Rule 7 CPC was dismissed by the Court below and the right to lead evidence of the petitioner/defendant was closed.
3. Learned counsel for the petitioner would submit that the petitioner

being an elderly lady of 72 years was not well as such she could not produce the evidence and thereby her right to evidence was closed. He would further submit that one last opportunity may be given to the petitioner so that she may be able to adduce the evidence or otherwise the petitioner will suffer irreparable loss, which cannot be compensated subsequently and still the case is fixed for arguments on 08.02.2018, therefore, no prejudice would be caused if one opportunity is given to adduce the evidence of defendant. Consequently, the petition may be allowed.

4. Perusal of the order would show that the case was fixed for evidence of the defendant on 20.07.2017, thereafter, she was proceeded ex-parte on 03.07.2017 which was set aside and subsequently on 16.10.2017 no evidence was adduced and lastly on 08.11.2017, when the counsel did not appear, the Court proceeded ex-parte and subsequently when the application was filed to set aside the ex-parte order, the same was dismissed, resulting into closure of the evidence of the defendant. Cause-title of the petition would show that the petitioner is an elderly lady of 72 years and being represented through power of attorney.
5. Considering the facts of this case, one last opportunity is afforded to the petitioner to adduce her evidence on the next date of hearing, which is said to be on 08.02.2018. On the said date, the petitioner shall adduce her evidence and examine herself and no further opportunity of hearing shall be given to her. The petitioner is also directed to pay an amount of Rs.1000/- cost, which would be payable

to the respondent.

6. It is made clear that no further opportunity shall be granted by the Court below in order to advance her evidence, with such direction I am inclined to allow one opportunity to the petitioner to lead evidence.
7. Accordingly, the order dated 13.12.2017 is set aside. With such observation, the writ petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu