

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227). No.68 of 2016

- Vikas Verma S/o Shri Ramji Verma, Aged About 27 Years R/o Purani Basti, Baloda Bazar, P. S. Baloda Bazar, District Raipur Chhattisgarh
Now District Baloda Bazar Bhatapara., Chhattisgarh

---- Petitioner

Versus

- Rishi Kumar S/o Shri Sidhdanath Shukla, Aged About 32 Years R/o Gandhi Chowk, Baloda Bazar, Police Station Baloda Bazar, District Raipur Now Baloda Bazar Bhatapara Chhattisgarh., Chhattisgarh.

---- Respondents

For the Petitioner	:	Shri Arvind Sinha, Advocate.
For the Respondent	:	Shri A. S. Rajput, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

05.07.2018

1. By this petition, the petitioner is challenging the impugned order dated 20.01.2016 passed by the Learned First Additional District Judge, Baloda Bazar, C.G. The learned Court below while dismissing the application filed by the petitioner under Order 17 Rule 1 of the Code of Civil Procedure 1908 has closed the rights to cross-examine the defendant's witness and further accepted the affidavits filed U/o 18 Rule 4 of defendant side as evidence.

2. Learned counsel for the petitioner submits that though on earlier occasions the counsel appearing before the trial Court had sought time to cross-examine the defendant's witness, but on 20.01.2016 the adjournment was sought on the ground that brother-in-law of arguing counsel Shri S.C. Shrivastava, Advocate has expired on 19.01.2016 and the arguing counsel has gone to attend the funeral of his brother-in-law. He further submits that learned Court below have completely failed to consider the reason assigned in the application dated 20.01.2016 and without application of mind dismissed the application by the impugned order.
3. Learned counsel for the petitioner have also filed certain order sheets and submitted that earlier the defendant also failed to appear to give evidence in his support and the learned trial Court have proceeded ex-parte against him on 20.07.2015. Against order dated 20.07.2015 defendant filed application U/o 9 Rule 7 of C.P.C which was allowed by the learned trial Court by imposing cost of Rs.5,000/- on defendant vide its order dated 01.12.2015.
4. Per contra learned counsel for the respondent supporting the impugned order submits that the petitioner have taken number of opportunities even then not cross-examined the defendant's witness, which is also mentioned in the impugned order and, therefore, the impugned order does not call for any interference.
5. I have heard the learned counsel for both the parties and perused the records.
6. From perusal of the order sheets it appears that though the petitioner sought number of opportunities to cross-examine the defendant's witness but on 20.01.2015 when the application under order 17 rule 1

was again filed for reasonable cause i.e., the original counsel who is to cross-examine was out of station for attending the funeral of his brother-in-law. The reason assigned in the application U/o 17 Rule 1 does not appear to be false and fabricated and it has also not been submitted before the learned Court below or before this Court that the grounds mentioned in the application U/o 17 Rule 1 of C.P.C does not exist.

7. Learned trial Court utterly failed to consider that the advocates are also owing social obligation and liabilities towards family and relatives but this aspect has been completely overlooked by the learned trial Court. It is the duty of the Court to consider the reason assigned in the application for adjournment on the date on which adjournment is sought and not only the number of dates earlier taken. The learned Court below have not discussed anything whether the reason for adjournment sought was for genuine reason or for the self created reason. The approach of the Court should be pragmatic while considering the prayer made in applications and not technical.
8. In view of the above I am of the opinion that learned trial Court have committed illegality in dismissing the application filed U/o 17 Rule 1 of C.P.C by not considering the reason assigned in the application as on date of filing application but only considered the early proceedings.
9. For the reason, stated above impugned order dated 20.01.2016 is hereby set-aside and it is directed that the petitioner shall be permitted to cross-examine the defendant's witness and, thereafter, learned trial Court will proceed further to decide the suit pending before him in accordance with law.
10. It is made clear that the petitioner will not seek any further adjournment for cross-examining the witness and if any adjournment is sought then

the Court below will be at liberty to pass appropriate order's in accordance with law including the striking out the right to cross-examining the defendant's witness.

11. This petition is allowed.
12. No order as to costs.

Sd /-

(Parth Prateem Sahu)

Judge

Jamal

