

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 179 of 2018**

- George Kurian S/o Ouseph Varkey Aged About 65 Years R/o Near Urla Anni-Cute, Belodi Road, Urla, Tahsil And District- Durg, Chhattisgarh.Defendant

---- Petitioner**Versus**

- Hemant Shrivastava S/o Late Jugal Kishore Shrivastava Aged About 53 Years R/o Quarter No. B/ 64, Vidhyut Nagar, Durg, Tahsil And District- Durg, Chhattisgarh.Plaintiff

---- Respondent

For Petitioner : Shri Malay Shrivastava, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****01/03/2018**

1. The instant petition is against the order dated 19.02.2018 wherein an application filed under Order 26 Rule 9 CPC has been allowed by the Court below.
2. Learned counsel for the petitioner would submit that the trial Court cannot make a robbing enquiry, collect the evidence on behalf of the plaintiff and the impugned order dated 19.02.2018 is apparently bad.
3. Perusal of the plaint would show that one Hemant Shrivastava has filed a case for recovery of an amount of Rs.23,14,570/- on the ground that certain constructions were made in the house of the defendant and out of that the part payment was made, whereas the amount of Rs.2314570/- was not paid, therefore, an application was made under Order 26 Rule 9 CPC to

asses the nature of the construction qua the quantum of claim. Perusal of the order and record would show that initially an application under Order 11 Rule 12 CPC was moved calling for certain documents, which were denied by the defendant. Thereafter, in order to asses the nature of construction an application was filed, which the Court allowed on the ground that the defendant would not allow to inspect the nature of construction otherwise.

4. In view of this since the entire issue of claim is dependent upon the nature of construction which is made in the house, it would be necessary to asses the construction on the site. It cannot be stated that in the circumstances the Court was collecting the evidence on behalf of the plaintiff. Unless & until the nature of construction is assessed, the Court cannot evaluate on the facts and the value. It is a secondary issue the Court may decide that who has carried out the construction and it would be further upon the parties to prove the fact that who has carried out the said constructions adducing evidence. Accordingly, I do not find any illegality in the impugned order.
5. The petition is dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu