

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 266 of 2018

Sadhram S/o Hetram Sahu, Aged About 36 Years R/o Raikona, tahsil Bilaigarh, District Raipur (Now District Balodabazar Bhatapara Chhattisgarh)., --- **Petitioner**

Versus

1. Shyamlal S/o Hetram, Aged About 31 Years Caste Sahu, R/o Raikona, Tahsil Bilaigarh, District Raipur (Now District Balodabazar Bhatapara Chhattisgarh),
2. Anantram S/o S/o Hetram Sahu, Aged About 34 Years R/o Raikona, Tahsil Bilaigarh, District Raipur (Now District Balodabazar Bhatapara Chhattisgarh),
3. Itwari Bai D/o Hetram Sahu Aged About 42 Years W/o Dwarika Prasad, R/o Raikona, At Present Bilaspur, Tahsil Bilaigarh, District Raipur (Now District Balodabazar Bhatapara Chhattisgarh.),
4. Fuleshwari Bai D/o Hetram Sahu Aged About 40 Years Wd/o Laldas, R/o Raikona, At Present Doma, Tahsil Malkharoda, District Janjgir Champa Chhattisgarh.,
5. Leela Bai D/o Hetram Aged About 38 Years W/o Dudhram, R/o Raikona, Tahsil Bilaigarh, District Raipur (Now District Balodabazar Bhatapara Chhattisgarh.),
6. Manmati D/o Hetram Aged About 29 Years W/o Lakhesh Kumar, R/o Raikona, At Present Tundra, Tahsil Kasdol, District Raipur Chhattisgarh.,
7. State of Chhattisgarh, Through The Collector, Raipur, (Now District Balodabazar Bhatapara) Chhattisgarh.,
8. Dhanbai, W/o Umendram, Aged About 45 Years Caste Satnami, R/o Raikona, Tahsil Bilaigarh, District Raipur (Now District Balodabazar Bhatapara) Chhattisgarh ---

Respondents

For the Petitioners	:	Mr. Alok Nigam, Advocate
For the State	:	Mr. Ashish Shukla, Dy. A. G.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

09.04.2018

Heard

1. The present petition is against the order dated 13.03.2018 passed by the learned Civil Judge Class-II, Bhatgaon in

Civil Suit No. 3-A/2009 wherein the application filed by the petitioner seeking opportunity to lead the evidence of the defendants' witnesses has been dismissed.

2. Learned counsel for the petitioner submits that on 20.02.2018 the petitioner/defendants' witness were present which would be evident from the signatures marked in the margin of order-sheet but the Court closed the evidence at 12.45 p.m., despite the witnesses were present on the ground that since the witness were directed to be present at 11.00 a.m., and the witnesses did not appear at 11.00 a.m., as such, the right to lead evidence was closed. Learned counsel for the petitioner submits that immediately on the very same day i.e., 20.02.2018 the application was moved seeking grant of opportunity to lead the evidences of defendants' witnesses and it is contended that when the witnesses tried to enter into court room they were stopped by the Court Peon as some evidence was going on in another case, as such, they did not appear and they were standing at the out side court premises. Subsequently, the application moved on the same date with a prayer to grant opportunity to lead the evidence was dismissed on 13.03.2018 repeating the ground that on earlier occasion also they did not appear at 11 O'clock.
3. Perused the order dated 20.02.2018. The first part of the order would shows that initially the case was called and when the witnesses were not present, it was again called at 12.30 p.m. and at that time petitioner Sadhram

informed that his witnesses and advocate will be present after some time. The order shows that witnesses were present at 12.45 p.m. and their presence was marked in the margin of the order-sheet by putting signatures. However, the court closed the evidence of the defendants' witnesses and fixed the case for final hearing. Thereafter the case was sent for annual inspection and eventually an application which was filed on the same day i.e., 20.02.2018 to allow the petitioner to lead evidence was considered on 13.03.2018 and the court recorded that on earlier occasion also the defendants failed to appear with their witnesses at 11 O'clock, thereby it can be presumed that the defendants were not interested and as such even when the application was moved to grant opportunity, the right to lead evidence was closed.

4. On perusal of the order dated 13.03.2018 this Court do not appreciate the manner in which the Court proceeded in the case. The reasons given in the order dated 20.02.2018 and the order sheet also reflects the fact that when the application was filed to lead evidence, the witnesses were present and subsequently the right to lead evidence of the witnesses was closed. When the said application was considered on 13.03.2018, the same was dismissed by assigning reason that on the earlier occasion the counsel and the witnesses were not present on time.
5. In any case, the order-sheet dated 20.02.2018 would show that the application was moved to reopen the evidence of witnesses on the same day and the witnesses

were present and marked their presence in the right margin of the order sheet and the time is shown as 12.45 p.m. The application filed by the petitioner also purports that the witnesses were present and when they tried to enter into court room, they were restrained on the ground that the evidence was being recorded in another case. In the said facts situation of the case, I am of the opinion that the Court should not adhere to the hyper technical approach and should keep in mind that the manner in which the right of the defendants to adduce evidence has been closed would lead to unfair trial.

6. Taking into consideration the facts and circumstances of the case and as has been stated at bar that the case is fixed for final arguments on 11.04.2018 before the Court below, it is directed that on the next date the petitioner shall appear before the Court and the Court shall fix the case for evidence of defence witnesses and shall allow the petitioner to lead evidence. It is also directed that as and when the date is fixed for evidence, the petitioner shall keep all the witnesses present before the court whose affidavits are filed before the court.
7. The petition is allowed with the above observations/direction.

**Sd/-
(GOUTAM BHADURI)
JUDGE**