

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 406 of 2018**

- Mohammad Yunus S/o Abdul Sattar, Aged About 62 Years Caste - Muslim, R/o Village And Post - Bhukel, Tahsil Basna, District Mahasamund Chhattisgarh

---- Petitioner**Versus**

1. Rajja Bai W/o Majid Meman, Aged About 63 Years R/o Saraipali, District Mahasamund Chhattisgarh
2. Amina Bai, W/o Rajjak Meman Pochi, Aged About 59 Years R/o Santoshi Nagar, Raipur Chhattisgarh
3. Jamila Bai (Dead),

Through:-LRS

a.Vahid Deda, S/o Abba Nur Deda, Aged About 45 Years

b. Majid Deda, S/o Abba Nur Deda, Aged About 40 Years

Both R/o – Main Road, Basna, Distt- P.S./Tahsil – Basna, Distt- Mahasamund(C.G.)

c. Madni Deda, S/o Abba Nur Deda, Aged About 33 Years, R/o Santoshi Nagar Raipur – (C.G.)

4. State of Chhattisgarh Through Collector, District Mahasamund Chhattisgarh

---- Respondents

For Petitioner	:	Shri Vipin Punjabi, Advocate with Shri Sunil Verma, Advocate
For Respondents-State	:	Shri Sangharsh Pandey, Dy. GA for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****04/05/2018**

1. Heard.

2. The instant petition is against the order dated 09.03.2018, wherein the right

to lead evidence that of the plaintiff was closed. Ground for closure of the evidence was that the plaintiff has refused to summon the witnesses by Dasti summons, as such it was held that the plaintiff appears to be reluctant and not interested in prosecuting his case and closure of evidence was ordered.

3. Learned counsel for the petitioner submits that the order like nature cannot be sustained and the plaintiff cannot be compelled to take Dasti summons for the witness. He further submits that the ordinary payment of process to the witnesses were made and the summons report also shows that they were not served and lastly the summons report was awaited. It is stated, as the summons report was awaited, the Court compelled the plaintiff to get the witnesses served through the Dasti summons, having shown the inability to avail Dasti summons, as punishment thereof, the right to lead evidence was closed, which cannot be done.
4. Perused the order of the Court below, which records that the plaintiff was present he was examined and cross-examined, thereafter was discharged. The court recorded that other witnesses who were summoned namely Munir Khan and Ameen Meman, though the summons were issued but the service report was still awaited. The order-sheet reflects since the other witnesses were not present, as such it appears that the application under Order 17 Rule 1 CPC was moved for adjournment. The Court further recorded that the evidence of the plaintiff was initially fixed on 27.06.2016 and on 09.11.2016 the plaintiff's advocate was directed to secure the presence of the witness through summons and the plaintiff has paid four times the process fee to secure the witness and the summons report is still awaited. Order further purports that thereafter under the situation, the Court directed the plaintiff to obtain the Dasti summons to get the witnesses served, but

having said so, the plaintiff showed his inability to serve the witness through the summons.

5. Order 16 Rule 7 A CPC governs the situation like nature, which reads as under:-

“7A. Summons given to party for service.- (1) The court may, on the application of any party for the issue of a summons for the attendance of any person, permit such party to effect service of such summons on such person and shall, in such a case, deliver the summons to such party for service.

(2) The service of such summons shall be effected by or on behalf of such party by delivering or tendering to the witness personally a copy thereof signed by the Judge or such officer of the court as he may appoint in this behalf and sealed with the seal of the court.

(3) The provisions of Rules 16 and 18 of Order V shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.

(4) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgment of service or for any reason such summons cannot be served personally, the court shall on the application of the party, re-issue such summons to be served by the court in the same manner as a summons to a defendant.

(5) Where a summons is served by a party under this rule, the party shall not be required to pay the fees otherwise chargeable for the service of summons.”

6. In this case, as appears from the order-sheet that on earlier occasion the Court permitted the witnesses to be summoned through the intervention of the Court by payment of process. Reading of Order 7A CPC as a whole would show that to serve a witness through the summons by way of Dasti i.e. by tendering the witness personally a copy thereof can be made on the application of the party and he cannot be compelled to do so. Meaning thereby, the Court cannot compel a party against his will to obtain summons and to serve the parties/witnesses or his agent on the witnesses. The scheme of legislature therefore is that when a party to a suit applies to Court

to summon his witnesses by Dasti summon, the Court has to respond to such cause.

7. The aforesaid preposition has been lamented by the Punjab & Haryana High Court in ***Balwant Singh Bhagwan Singh and another Vs. Firm Raj Singh Baldev Kishen {AIR 1969 PUNJAB AND HARYANA 197}*** wherein in para 10 it is held thus:-

“10. I have no quarrel with the principle enunciated by Dixit J. in roshan Singh's case AIR 1953 Madh Bha 48. I have already observed above that the court cannot compel a party against his will, to obtain summonses and to serve them either himself or through his agent on the witnesses. But where the summonses to the witnesses cannot be issued owing to the default of the party concerned, such as non-deposit of process-fee or belated deposited of process-fee so that there is not sufficient time for the issue and service of the summonses on the witnesses, he disentitles himself to the assistance from Court . The Court may either refuse to grant adjournment or permit him at his own request to obtain summonses for service on the witnesses himself or through his agent . But even in such a case the Dasti process is to be issued only at the request of the party and not otherwise.”

8. The case in hand would show that summons though was issued to the witnesses it remained unserved, therefore, since because of the fact that the plaintiff or a litigant refuses to obey the command of the Court to obtain the summons to serve through Dasti, he cannot be punished, if the same is refused. If it was the case even after service of summons, the witnesses have not turned up, the Court could have procured their attendance to adduce evidence by coercive method.
9. Further in the case of ***Roshan Singh Vs. Chiranjilal {AIR 1953 M.B. 48}*** the Court has held that there is no provision in the C.P. Code casting an obligation on the parties to accompany the process-server for having the summons served on their witnesses. It is the duty of the process-server to

serve the summons and if he fails to do so, parties cannot be punished for his negligence by closure of the right and the court should not normally shut the right and close the evidence of parties, unless the act of parties is negligent and are serious in nature, which shows laches on their part.

10. In the instant case, the facts would suggest that despite payment of process, the witnesses did not turn up and even the summons report was awaited. In the result, having refused to accept to serve the witnesses by Dasti summons, the closure of the evidence of the plaintiff cannot be ordered as a punishment by drawing an inference. The insertion of word in Order 16 Rule 7-A CPC by the legislature "the Court may on application of party" make a departure from compelling a party to obtain Dasti Summon. Accordingly, the order dated 09.03.2018 is set aside. On payment of process by the plaintiff, the summons be served to the witnesses to procure their attendance before the Court by the learned court below. Despite the service of summons, the witness do not appear, the Court shall be at liberty to procure their attendance by coercive method.

11. With such observation, the petition stands allowed.

Sd/-

Goutam Bhaduri

Judge

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