

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 438 of 2018

1. Smt. Mala Dubey, W/o. Dr. T.N. Dubey, Aged About 50 Years, R/o. Gitanjali Nagar, Street No.06, Bilaspur, Tahsil And District Bilaspur Chhattisgarh.
2. Shri Dr. T.N. Dubey, S/o. Chandrika Prasad Dubey, Aged About 54 Years, R/o. Gitanjali Nagar, Street No. 06, Bilaspur, Tahsil And District Bilaspur Chhattisgarh.
3. Gopal Kachhi, S/o. Late Laxman Kachhi, Aged About 42 Years, R/o. Chadda Badi, Mangala, Tahsil And District Bilaspur Chhattisgarh.

(All of them are Defendants in the Original Suit No. 19A/2012)

---- Petitioners

Versus

1. Smt. Vidya Devi, W/o. Lakhan Lal Saraf, Aged About 64 Years, R/o. Kashyap Colony, Gitanjali Nagar, Tahsil And District Bilaspur, Chhattisgarh. (Plaintiff in the Original Suit No. 19A/2012)
2. State Of Chhattisgarh, Through Collector Bilaspur Chhattisgarh. (Defendant in the Original Suit No. 19A/2012).

---- Respondents

 For Petitioners : Mr. Siddharth Dubey, Advocate
 For State : Mr. S.R.J.Jaiswal, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

10.05.2018

Heard

1. The present petition is against the order dated 20.02.2018 whereby the right to lead evidence of the defendants was closed.
2. Learned counsel for the petitioners submits that perusal of the order sheet would show that on three dates, the defendants could not produce their witness but subsequently certain applications were filed and the civil suit was fixed for adjudication of all these applications, therefore, it cannot be stated that the case was fixed for defendant witnesses. It is further submitted that the adjudication of any application pending cannot be amalgamated with the date of evidence. Consequently, the Court misinterpreted

the different dates and eventually on the wrong footing has closed the right to lead evidence.

3. Perused the order sheets of the Court below. Perusal of the order sheet shows that on 29.08.2017 the case was first time fixed for defendants witness. It went to 27.09.2017 for defendants witness and on that date also the defendants did not produce any witness and case was fixed for 10.10.2017 for defendants witness. On 10.10.2017 again the witnesses were not present and the case was fixed for defendants witness on 27.10.2017. On 27.10.2017 the defendants instead of adducing the evidence filed an application under Order 8 Rule 6 of C.P.C. alongwith the document. Thereafter, the case was fixed for hearing on the application under Order 8 Rule 6 of C.P.C. on 09.11.2017. On 09.11.2017 the plaintiff sought time to file reply to the application and it went to 21.11.2017. On 21.11.2017 again the hearing was adjourned to 28.11.2017. On 28.11.2017 the case was again adjourned to 07.12.2017 and on 07.12.2017 again it went to 11.12.2017. On 11.12.2017 the application so filed by the defendants were accepted at a cost of Rs.1000/-. Thereafter, the case was fixed for defendants witness on 15.01.2018. On 15.01.2018 the defendants did not produce their witness and an application was filed under Section 151 of C.P.C. Thereby, again the civil suit was derailed from the track of evidence and was fixed on 16.01.2018. On 16.01.2018 the Court dismissed the application filed by the defendants and fixed the case again for the defendants witness on 30.01.2018 and last chance was afforded to the defendants. On 30.01.2018 despite the last chance given, the defendants did not produce their witness and an application under Order 1 Rule 10 of C.P.C. was filed and the case went to

07.02.2018 for argument on that application. On 07.02.2018 again the case was fixed for 13.02.2018. On 13.02.2018 the application preferred by the defendants was adjudicated and the case was fixed for defendants evidence on 20.02.2018 by giving reminder that a last chance was afforded earlier. On 20.02.2018 again adjournment was sought for and on that date the right to lead evidence of the defendants was closed and further observed that the suit is pending from 2004 and more than 13 years have passed.

4. Perusal of the entire order sheets in the entirety shows that initially the case was fixed for defendants witness on 29.08.2017; thereafter initially three dates were given and on the fourth date an application was filed instead of leading the evidence. Thereby, the civil suit was derailed from the evidence. Ultimately, that interim application was decided and again the case was fixed for defendants witness on 15.01.2018 and instead of giving evidence again one interim application was filed then again that application was dismissed and the case was fixed for 30.01.2018 with a specific direction that last chance is given to produce evidence. On that date instead of evidence again an application was filed under Order 1 Rule 10 of C.P.C. and the civil suit again lost its track. Thereafter, the interim application was decided after two dates and the case was fixed for defendant witness on 20.02.2018. On 20.02.2018 again no witness was produced and the Court eventually closed the right to lead evidence.
5. Considering the entire order sheets and the nature and way the suit is conducted, the proceeding cannot be made litigant controlled and, as such, the order of closure of the evidence by

the Court below can always be justified. The facts would show whenever the case was fixed for evidence, on some interim application or other, the proceedings were hijacked, which cannot be allowed at the instance of any litigants. The effort on part of petitioners does not cause any substantial addition to justice delivery system but has fed the vested interest. Taking into totality of the facts and entire dates, it appears that deliberate acts were made which led to closure of evidence, as such the order cannot be faulted.

6. In a result, the petition has no merit and accordingly it is dismissed at the admission stage itself.

Sd/-
(Goutam Bhaduri)
Judge