

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 432 of 2018

1. Smt. Sarla Devi Chandak, 58 yrs W/o Jainarayan Chandak, Chandak Bhavan, Gali 1, Fafadih, Raipur.
2. Omprakash Chandak, 45 Yrs S/o Gianchand Chandak, 28, Barnabi Road, Kilpaak, Chennai - 10
3. Narayandas Chankdak, 60 Yrs S/o Nakhatmal Chandak, Jethapara, Jaisalmaer, Rajashthan.
4. Smt. Rama Kela (Chandak), 35 Yrs W/o Harshad Kela (D/o Jainarayan Chandak), 15, Himgiri Apartment, Painder Road, Opposite Jaslok Hospital, Mumbai, Maharashtra.
5. Sanjay Chandak, 45 Yrs, S/o Jainarayan Chandak, Chandak Bhavan, Gali 1, Fafadih, Raipur.
6. Chaya Mohta (Chandak), 31 Yrs W/o Sanjay Mohta (D/o Jainarayan Chandak), C/o Ganchitola, Near Ratanlal Garage, Chaibaas, Jharkhand, Presently At Chandak Bhavan, Gali 1, Fafadih, Raipur.
7. Vallabhdas Chandak, 43 Yrs, S/o Vasatpal Chandak, 1002, Poonam Apartments, Parle Point, Surat, Gujrat.

---- Petitioners

Versus

1. Chandrashekhar Vyas S/o Late Murlidhar Vyas, Chopasani Road, Near Shani Temple, Bagtawar Malni Ka Bagh, Jodhpur, Rajasthan.
2. Smt. Mamta D/o Late Murlidhar Vyas, W/o Vallabh Purohit, Opposite Jawahar Pyau, Umedpura, Fallaudi, Jodhpur, Rajasthan.
3. Smt. Sangita D/o Late Murlidahr Vyas, W/o Pawan Purohit, Opposite Saraswati Ashram, Umedpura, Fallaudi, Jodhpur, Rajasthan.
4. Pannalal Vyas S/o Dhanraj Vyas, Bagtawar Malni Ka Bagh, Janki Bhavan, Sardarpura, Jodhpur, Rajasthan, Presently At Late Jaishankar Vyas Residence, Lakshmi Marble, Beside Hora Transport, Opposite Raipur Ice Factory, Fafadih, Raipur.
5. Madhusudan Vyas S/o Manaklal Vyas, Aged About 86 Years Laxmi Panel Door Industries, Shastri Nagar Industrial Area, Jodhpur, Rajasthan.

---- Respondents

For petitioners - Shri Raja Sharma, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

8/05/2018

Heard.

1. Instant petition is against the order dated 27/04/2018 whereby right to lead evidence of the plaintiff was closed.
2. Learned counsel for the petitioners/plaintiffs would submit that perusal of the plaint would show that on 9/04/2018 one Madhusudan G. Vyas was added as defendant No.3 in the plaint and the case thereafter was fixed for 23/04/2018 for his appearance. He submits that under statute he would have got 30 days time to file written statement and order sheet dated 23/04/2018 would show that he was proceeded ex-parte. Subsequently, after four days case was fixed for plaintiff evidence and on that date despite the fact that statement of the plaintiff by way of affidavit was on record but he had to go outside for some urgent domestic work and prayed for one date, right to cross examination was closed. He submits that one opportunity may be granted to get himself cross examined before the court as otherwise it would cause serious prejudice to the plaintiff case.
3. Perused the document filed along with the petition. Order sheet dated 23/04/2018 would show that on that date one of the defendant who was added in the plaint namely Madhusudan G. Vyas was proceeded ex-parte. Copy of the plaint which is annexed would show that Madhusudhan G. Vyas was added on 9/04/2018 and order sheet shows that on that date Madhusudhan G. Vyas was proceeded ex-parte for his non-appearance and it was fixed for plaintiff evidence on 27/04/2018. On 27/04/2018 plaintiff was absent as such right to lead evidence was closed by rejecting the application under Order 17 Rule 1 of CPC. In the application reason is assigned that the plaintiff has to go out for some

urgent domestic work, therefore one date was prayed for. Perusal of the record would show that statement of the plaintiff Sanjay Chandak is on record. Taking into facts and background of this case that on 23/04/2018 case was fixed for filing of written statement of newly added defendant naturally he would have got statutory time of 30 days to file written statement.

4. In view of this when case was fixed for 27/04/2018 in absence of the witness when case was closed one opportunity in the opinion of this court one opportunity can be granted to the plaintiff so that cause of justice is advanced on merit. In view of this, order dated 27/04/2018 is set aside. Plaintiff is allowed to lead all his evidence including his cross examination on the next date. It is directed that the plaintiff shall keep all the witness present on the next date including himself for cross examination and the trial court if need be shall handle the case as expeditiously as possible.

5. With such observation, the petition stands disposed of

Sd/-

(Goutam Bhaduri)

JUDGE