

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****W.P.(227) No. 607 of 2018**

1. Narendra Kumar Parakh, S/o. Late Panchilal Parakh, Aged About 58 Years, R/o. Parakh Mension Gudhiyari Raipur Chhattisgarh (LRs. Of Late Panchilal Parakh)
2. Smt. Saras Bai Parakh, W/o. Shri Panchilal Parakh, Aged About 86 Years, R/o. Parakh Mension Gudhiyari Raipur Chhattisgarh.
3. Pachilal Parakh, S/o. Suganchand Parakh (Now Dead) Through LRs.
 - (A) Rajendra Kumar Parakh, S/o. Late Panchilal Parakh, Aged About 61 Years, R/o. G-9, Sales Tax Colony Raipur, District Raipur, Chhattisgarh.
 - (B) Virendra Kumar Parakh, S/o. Late Panchilal Parakh, Aged About 51 Years, R/o. Ekta Enclave, O.C.M. Chowk, Raipur, District Raipur Chhattisgarh.
 - (C) Smt. Tara Devi Bafna, D/o. Late Panchilal Parakh, Aged About 63 Years, R/o. Kamthi Line, Rajnandgaon, District Rajnandgaon Chhattisgarh.
 - (D) Smt. Madhu Jain, W/o. Shri Premchand Jain, D/o. Late Panchilal Parakh, Aged About 59 Years, R/o. Sahagal Apartment Kamthi Line, Nagpur (Maharashtra)
 - (E) Smt. Shail Baradiya, W/o. Shri Neelamchand Baradiya, D/o. Late Panchilal Parakh, Aged About 55 Years, R/o. Walford Society, behind Ramkrishna Hospital, Tikrapara Raipur, District Raipur, Chhattisgarh.
 - (F) Smt. Sarita Samra, W/o. Shri Vijay Samra, D/o. Late Panchilal Parakh, Aged about 53 Years, R/o. Nehru Nagar, Bhilai, Near Apollo Hospital Bhilai, District Durg Chhattisgarh.
4. Manish Jain, S/o. Premchand Jain, Aged About 37 Years, R/o. 52 Star - K, Town, New Colony Chhawani, Nagpur, Maharashtra.
5. Naveen Bafna, S/o. Shri Dr. Pukhraj Bafna, Aged About 46 Years, R/o. Ganj Line, Rajnandgaon, District Rajnandgaon, Chhattisgarh.
6. Nitif Bafna, S/o. Dr. Shri Pukhraj Bafna, Aged About 41 Years, R/o. Ganj Line, Rajnandgaon, District Rajnandgaon, Chhattisgarh.
7. Nishant Bafna, S/o. Dr. Shri Pukhraj Bafna, Aged About 39 Years, R/o. Ganj Line, Rajnandgaon, District Rajnandgaon, Chhattisgarh.

---- Petitioners**Versus**

1. Mohammed Tariq Qureshi, S/o. Shri M.S. Qureshi, Aged About 35 Years, R/o. Byron Bazar, Raipur, District Raipur Chhattisgarh.

2. Shri Padam Nagwani, S/o. Shri Potumal Nagwani, R/o. Mangdapara, Raipur, District Raipur, Chhattisgarh.

---- Respondents

 For Petitioners : Mr. H.S.Patel, Advocate
 For Respondents : Mr. Abhyuday Singh, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

20.07.2018

Heard

1. The present petition is against the order dated 19.06.2018 and 23.06.2018 whereby an application to re-examine the witness who was examined on commission was dismissed alongwith an application under Order 6 Rule 17 of C.P.C. claiming amendment to the written statement was dismissed. Further the right to lead evidence of petitioner was also closed.
2. Learned counsel for the petitioners would submit that the suit property has devolved on the petitioner No.1 after death of his father namely Panchilal Parakh and by virtue of the gift deed executed by the other defendants contesting the suit, therefore, after death of his father, he being a sole owner of the property, the necessary amendment to this effect was prayed for, which was dismissed. It is further contended that the amendment would be necessary in the interest of justice to decide the lis on merits. It is also contended that the learned Court below has closed the right to cross-examine the plaintiffs' witness on commission and thereafter right of petitioner to lead evidence. It is contended that if the witness of plaintiff is not cross-examined then in such case the defendants shall suffer an irreparable loss which cannot be further compensated. It is further stated that right to lead evidence of petitioners were also closed; therefore, one opportunity should

have been given to the petitioners to cross-examine the witness and further adduce his evidence.

3. Learned counsel for the respondents appears and vehemently opposes the argument. He placed the certified copy of the order sheets and would submit that right to cross-examine was actually closed on 11.06.2018 which is not under challenge, however, an application to re-examine the witness when was dismissed, the same is under challenge. It is further contended that the Commissioner in this case was appointed in the year 2015 and the report of the Commissioner would show that despite all measures taken, the petitioner was not appearing before the Commissioner; therefore, there has been a deliberate delay is caused. He further submits that the petitioner No.1 herein was contesting the suit before the Court as a power of attorney holder of all the defendants and merely one of the defendant since has died and he became the legal heir by virtue of the alleged Will, it will not confer any further title over and above the deceased for whom the detail written statement was already filed. It is further stated that conduct of petitioner would show that despite opportunity granted the petitioners failed to adduce evidence and therefore right to close evidence is well merited. It is further submitted that the petition has no merit and deserves to be dismissed.

4. The order sheets of the Court below is placed on record for perusal. The amendment so proposed by the petitioners is perused. Perusal of the amendment proposed only speaks about the *inter se* devolution of the property in between the defendants/ petitioners. The suit in this case was filed in the year 1999 wherein the written statement was initially filed on 06.03.2002. Be that as it may, the petitioner No.1 who is son of Panchilal Parakh is now

defendant No.2. It appears that Narendra Kumar Parakh after death of Panchilal Parakh was arrayed as a legal representative of Panchilal Parakh. The nature of the amendment sought qua written statement, the dispute of the property is for claim made by Mohd. Tariq Qureshi do not appear to be anywhere relevant to contest the lis on merit. It is a dispute in between the third party and family of the petitioners/defendants; therefore, what are the arrangements carried out in between the family members, it will be absolutely unnecessary to incorporate such amendment to decide the civil suit. If the property was devolved on the petitioners during the pendency of the suit then by virtue of Section 52 of the Transfer of Property Act, the grievance of the petitioners can be enveloped in that. The nature of the amendment which was filed on 18.06.2018 after a period of 16 years of filing of the written statement cannot be allowed on the ground stated in the application for amendment that the petitioner was not aware of the certain fact for the reason that he was on international trip and was out of India from 21.05.2018 to 10.06.2018. The reasons so assigned by the petitioner for amendment cannot be appreciated in light of the provisions of Order 6 Rule 17 of C.P.C. Virtually the reasons of delay has not been assigned at all. Therefore, the dismissal of the application under Order 6 Rule 17 of C.P.C. by the Court below considering the nature of the proposed amendment do not suffer with any infirmity, which requires any interference.

5. Now coming to the dismissal of the closure of right to cross-examine the witness before the Commissioner, the order sheets as would reveal that the Commissioner was appointed on 16.07.2015 to examine one witness Mohd. Shakeel Qureshi on commission and Advocate Yogendra Tamrakar was appointed as

Commissioner to record the statement. The order sheet of 11.06.2018 would further show that the Commissioner has initially on 04.06.2018 appeared before the Court and stated that both the counsel never agreed for an agreed date and, as such, the commission could not be executed and requested the Court to fix the date. Thereafter, the Court on 04.06.2018 directed that both the parties shall remain present in the house of the plaintiff on 10.06.2018 at 10 A.M. and further observed that in absence of presence of any of the parties, the right to examine shall be closed. The commission was executed thereafter. The Commissioner had given a report that on that date of evidence the defendant alongwith his counsel did not appear on the fixed date & time. The said reasons so assigned was denied by the counsel of petitioners before the lower Court but the Court instead of believing the statement of the counsel, believed the submission of the Commissioner, who was appointed by the Court. Consequently, accepted the Commissioner's report and right to cross-examine of the witness was closed. The said order dated 11.06.2018 has not been put to challenge by the petitioner. Instead subsequently an application was filed to re-open seeking permission to cross examine witness was filed with further prayer to provide a chance to cross-examine the witness, which was having been dismissed by the order dated 19.06.2018, the instant petition was filed. In the application to re-open the right to cross-examine the witness filed by the petitioner, it is stated that at about 10:30 A.M. the Advocate had reached to the house of the plaintiff witness Shakeel Qureshi wherein he was informed that Shakeel Qureshi had gone out. Having heard so, the counsel stormed into the house of the plaintiff and saw that the witness is not present.

Thereafter, it is stated that he went to the house of the plaintiff's counsel wherein the Guard informed him that the counsel is also out of station.

6. The reason assigned by the petitioner appears to be without any logic and it is difficult to believe that a counsel in such situation will storm into some one house to search whether the witness is present or not. Furthermore, the statement of the Commissioner can always hold the sway in his favour to presume the facts otherwise.
7. Apparently, it appears that the false averments have been made. The Supreme Court way back in ***Hari Narain v. Badri Das***¹ has laid down the ratio that "it is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading.
8. The Supreme Court in case of ***Dalip Singh v. State of Uttar Pradesh & Others***² purely has stated the value of the truth as under :

"1. For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted as integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has been drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings."

1 AIR 1963 SC 1558

2 (2010) 2 SCC 114

9. The reasons stated in the application therefore when was filed to allow to cross-examine the witness is completely afterthought and with an ulterior design.
10. The Supreme Court in ***Prestige Lights Ltd. v. SBI***³ has affirmed the ratio that in a case the conduct of a party invoking the jurisdiction of the Court has always to be kept in mind. If the Court confined that the facts are suppressed or misleading then the Court may dismissed the action without adjudicating the mater on merits. The rule has been evolved in larger public interest to determine unscrupulous litigants from abusing the process of court by deceiving it. Furthermore, the order sheet would show that thereafter when the case was fixed for evidence of the defendants, the learned Court below has given the date initially on 13.06.2018 and directed the defendants/petitioners to keep their witness present. The witness remained absent on the next date and subsequently when the date was again fixed for 15.06.2018, taking into fact that the case is pending since 1999 certain documents were again filed. Thereafter, again the case was fixed for defendants' witness on 21.06.2018 and on that date also, it appears that the defendants' witness were not present and again on 23.06.2018 when the defendants' witness were not present, the right to lead evidence was closed. The said application having been dismissed, an application by way of threat was filed that the petitioners are moving an application for transfer of the case to other Court, thereby shamelessly resorted to falsehood and unethical means to achieve the goal. The Supreme Court therefore in case of ***Dalip Singh*** (supra) has laid down in last that the litigants who resort the falsehood and unethical means, the

3 (2007) 8 SCC 449

Court has to evolve a new rules that a litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

11. The facts would show that the civil suit is pending since 1999 in the original side of jurisdiction. So taking the entire nature of allegations and the submissions made allowing the prayer made by the petitioner would be too relaxing and would buttress the unethical means adopted by the petitioner which may eventually resulting into precipitation of humiliation for the Court below, which is holding the trial.
12. Considering the exercise of the petitioner in totality and the conduct of the petitioner that after dismissal of the petition to allow the examination of the witness and closure of the evidence of the defendant for non-appearance of the witness and further after dismissal of the application under Order 6 Rule 17 of C.P.C. when an application was filed before the District Judge for transfer of the case, certainly it was made with an effort to drive the trial Court to a corner and create pressure; thereby succumbed to the demand of the petitioner. Under the circumstances, this High Court in exercise of power while adjudicating the authenticity of the same is bound to insulate and protect the officer who are trying to decide the case specially when which is pending since 1999.
13. In the facts of this case, the petition is frivolous, misconceived and without any merit. Accordingly, it is dismissed with a cost of Rs.5000/-. The cost would be payable to the Secretary, Legal Aid of the District.