

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 653 of 2018

Bhagwatiprasad Sahu S/o Late Ramnarayan Sahu Aged About 62 Years R/o Near Sahu Sadan, Kelabadi Durg, Tahsil And District Durg, Chhattisgarh

---- Petitioner

Versus

1. Pawan Kumar Sabu S/o Late Shri Ram Ratan Sabu Aged About 37 Years.
 2. Pankaj Kumar Sabu S/o Late Shri Ram Ratan Sabu Aged About 32 Years.
 3. Smt. Tara Devi Sabu W/o Late Shri Ram Ratan Sabu Aged About 63 Years.
 4. Smt. Savitri Devi Sabu W/o Late Shri Banshidhar Sabu Aged About 86 Years
- All R/o Infront Of Maheshwari Steel Traders, G. E. Road, Ganjpara, Durg, Tahsil And District Durg, Chhattisgarh.
5. Smt. Manju Birla W/o Shri Ashok Birla Aged About 43 Years, R/o Plot No. 18, Maheshwari Parisar, Borsi Chowk, Durg, Tahsil And District Durg, Chhattisgarh.

---- Respondents

For petitioner – Shri P.R. Patankar Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

1/08/2018

Heard.

1. Instant petition is against the order dated 20/07/2018 whereby an application filed by the petitioner under Order 16 Rule 1 read with 151 of CPC was dismissed whereby prayer was made to call for the Branch Manager of Dena Bank, Durg and to bring record of the saving account number 4661 and cheque no.2316183.
2. It is contended that earlier plaintiff had filed the criminal complaint under Section 138 of the Negotiable Instruments Act for the alleged dishonour of the cheque issued by father of the defendants/respondents namely Ram Ratan Sabu. It is stated that during the pendency of such criminal complaint Ram Ratan Sabu died which resulted into abatement of

the criminal proceeding. Consequently, there was no other chance left and civil suit was filed by the legal heirs of Ram Ratan Sabu respondents herein. Parties adduced their evidence, however defendant in the cross examination completely disowned the fact that father of the defendant Ram Ratan Sabu was having an account in the bank or had issued any cheque in favour of the plaintiff/petitioner herein. Consequently, necessity arose to move an application under Order 16 Rule 1 read with 151 of CPC to call for the Branch Manager with the relevant record. However, the court without any application of mind has dismissed the same. It is contended that if the plaintiff is denied to lead evidence entire right to prove the case on merits before the court shall stand defeated. Therefore, one opportunity may be given to the plaintiff to call the witness.

3. Perused the order of the court below. Learned court below has dismissed the application on the ground that since case is listed for final hearing and the case is pending for last 5 years, therefore no opportunity could have been given to lead evidence. Documents connected with this petition also contains an application under Order 16 Rule 1 read with 151 of the CPC as also statement of the defendant. Perusal of the statement of the defendant Pawan Kumar Sabu cross examination of para 16, 17 and 18 would show the fact about dishonour of the cheque was completely disowned by the legal heirs and existence of bank account at Dena Bank is also denied. Therefore, the application under Order 16 Rule 1 of CPC was filed to call the Branch Manager to come with the record and the cheque. Admittedly, it appears that though the application is delayed but taking into nature of the dispute as entire claim is based on the cheque which was issued by the father of the defendants, if the factual aspect of the denial is accepted then the truth may not come to fore. Under the circumstances, to advance cause of justice on merits one opportunity is granted to the petitioner/plaintiff to call for the witness Branch Manager of the Dena Bank with the relevant record to prove the existence of the alleged cheque and the account.

4. In the result, the petition is allowed. Application under Order 16 Rule 1 read with 151 of CPC stands allowed subject to payment of cost of Rs.2500/- to the defendants. It is directed that the plaintiff on payment of PF shall be entitled to summon the concerned Branch Manager with the relevant document and the trial court thereafter shall record the evidence without any adjournment and thereafter shall proceed to decide the case on merits.

Sd/-

(Goutam Bhaduri)

JUDGE

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