

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Art. 227) No.824 of 2018

Ramdev Nishad, S/o late Shri Couthram Nishad, aged about 65 years,
R/o Behind Pili Building, Kumhar Para, Raman Mandir Ward, Fafadih,
Raipur (C.G.)

(Plaintiff)
---- Petitioner

Versus

Mewalal Nishad (dead) through LR's

1. Smt. Tara Bai, Wd/o late Mewalal Nishad
2. Ku. Jyoti Nishad, D/o late Mewalal Nishad, aged about 21 years
3. Prakash Nishad, S/o late Mewalal Nishad, aged about 19 years
4. Minor Ku. Nikita Nishad, D/o late Mewalal Nishad, aged about 13 years
5. Minor Narendra Nishad, S/o late Mewalal Nishad, aged about 10 years

Respondent No. 4 and 5 are minor through guardian their mother respondent No. 1 Tarabai Nishad.

All are R/o Behind Pili Building, Kumhar Para, Raman Mandir Ward,
Fafadih, Raipur (C.G.)

(Defendants)
---- Respondents

For Petitioner: Mr. A.K. Prasad, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

25/09/2018

1. Heard on admission.
2. By order dated 19-1-2018, the trial Court rejected the plaintiff's application for granting opportunity to adduce evidence and closed his opportunity against which this writ petition has been preferred.
3. Learned counsel for the petitioner/plaintiff submits that the trial Court did not consider the application that on 19-1-2018 the plaintiff is unwell

and rejected the application mainly on the ground that earlier, twelve adjournments have been granted which is in teeth of the judgment rendered by the Supreme Court in the matter of **State Bank of India v. Chandra Govindji (Km.)**¹, therefore, the impugned order is liable to be set aside.

4. A careful perusal of the impugned order would show that the trial Court has basically got influenced with the fact that earlier, twelve adjournments have been granted and the adjournment sought on 19-1-2018 is not just and proper.
5. The Supreme Court in **State Bank of India** (supra) has held that the mere fact that in the past adjournments had been sought for and granted would not be relevant and in ascertaining whether a party had reasonable opportunity to put forward his case or not, one should not ordinarily go beyond the date on which adjournment is sought for. The earlier adjournment, if any, granted would certainly be for reasonable grounds and that aspect need not be once again examined if on the date on which adjournment is sought for the party concerned has a reasonable ground.
6. In the instant case, though the plaintiff has been granted twelve adjournments earlier and though medical certificate was not filed for not being well on 19-1-2018, the trial Court ought to have considered the application favourably looking to the illness of the plaintiff. In view of the above and looking to the fact that the suit is pending since 2014, in the interest of justice, opportunity to lead the evidence of his three witnesses namely, the plaintiff himself and two other witnesses is granted to the plaintiff. All the three witnesses will be kept present by the plaintiff himself on the date of hearing already fixed on 26-9-2018

¹ (2000) 8 SCC 532

before the trial Court along with his affidavit under Order 18 Rule 4 of the CPC subject to payment of cost of ₹ 3,500/- to the defendants which will be paid on the said date. If the plaintiff fails to examine the witness(es) on that day, no further opportunity will be provided to the plaintiff. The defendants are at liberty to file application for modification, if any.

7. With the aforesaid liberty, the writ petition stands finally disposed of.

No order as to cost(s).

8. Certified copy today.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma