

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(227) No. 988 of 2018**

Smt. Mongra Gupta, aged about 50 years, W/o Late Sharadchandra Gupta, R/o Om Nagar, Jarhabhatha, Bilaspur, Tahsil and District Bilaspur (C.G.).....[Plaintiff]

---- **Petitioner**

Versus

1. Smt. Poonam Agrawal, W/o Rajesh Agrawal, aged about 50 years, R/o Brihaspati Bazar, Bilaspur, Tahsil and District Bilaspur (C.G.)
2. Rajesh Agrawal, S/o Fulchand Agrawal, aged about 58 years, R/o Brihaspati Bazar, Bilaspur, Tahsil and District Bilaspur (C.G.)

--- **Respondents/Defendants**

For Petitioner	:	Mr. Kamlesh Prasad, Advocate.
For Respondents	:	None.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

01/12/18

1. The petitioner/plaintiff's opportunity to lead evidence has been closed by the trial Court by impugned order dated 29.10.2018 on the ground that several opportunities were given to her earlier to lead evidence against which this writ petition has been preferred.
2. Learned counsel for the petitioner submits that the impugned order is unsustainable and bad in law and is liable to be set aside.
3. I have heard learned counsel for the petitioner and perused the impugned order.
4. The trial Court has simply closed the opportunity of plaintiff by the impugned order on the ground that several opportunities have been granted to her earlier for evidence. In the considered opinion of this Court that cannot be made a ground for rejection of prayer to lead evidence as

the counsel for the petitioner did not appear on 29.10.2018 and plaintiff herself was present before Court and sought for adjournment which appears to be sufficient cause for not producing the witnesses.

5. Accordingly, the impugned order is set aside and as stated by the learned counsel for the petitioner the plaintiff and her two witnesses will file their affidavit under Order 18 Rule 4 CPC on or before 31.12.2018 and they will be examined on 09.01.2019 as the date fixed by the trial Court subject to payment of cost of Rs.3000/- to the defendants. However, the defendants would be at liberty to move an application for modification of order, if aggrieved.

6. In case of default of filing of affidavit and payment of cost of Rs.3000/- to the defendants and not keeping the witnesses present before the trial Court on the said date shall entail closure of her opportunity to lead evidence without reference to this Court.

7. A copy of this order be sent to the trial Court directly as well as through the concerned District Judge for needful and compliance.

SD/-

(Sanjay K. Agrawal)
Judge