

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(227) No. 998 of 2018**

Jagdish Prasad Banchhor, S/o Late Vishambhar Banchhor, aged about 74 years, R/o D-13, Ravinagar Colony, Rajatalab Raipur (C.G.) through Power of Attorney holder Vinod Kumar Adil, S/o Shri Neelkanth Adil, aged about 57 years, R/o Near Om Shanti Niketan School, Adarsh Nagar Mova, Police Station Mova, Tahsil and District Raipur (C.G.)

---- **Petitioner/Defendant**

Versus

1. Anupama Kaul D/o Late Vijay Kumar Kaul, R/o Purohit Bada, Burhapara, Raipur, District Raipur (C.G.).....[Plaintiff]
2. The State of Chhattisgarh, through the Collector, Raipur, District Raipur (C.G.).....[Defendant]

--- **Respondents**

For Petitioner	:	Mr. S.C. Verma, Advocate.
For Respondent No.1	:	None, though served.
For Respondent No.1/State:		Mr. Rahul Tamaskar, PL

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

29/11/18

1. The trial Court by order dated 20.09.2018 directed payment of process fee for issuance of summon to defendant's witness Tahsildar, Raipur and fixed the date for hearing on 10.10.2018. The defendant paid the process fee on 22.09.2018 but despite service of summon, the Tahsildar did not appear and the trial Court closed the evidence of the defendant and fixed the case for final hearing against which this writ petition has been preferred.

2. Mr. Satish Chandra Verma, learned counsel appearing for the petitioner/defendant submits that petitioner cannot be penalized for the absence of Tahsildar as despite service of summon from the Court he did not appear and in order to expedite the old matter, the petitioner cannot

be deprived of his opportunity to lead evidence which is absolutely arbitrary.

3. Mr. Rahul Tamaskar, learned Panel Lawyer appearing for the State-respondent No.2 submits that on the next date given by the Court, the Tahsildar, Raipur will remain present before the trial Court.

4. I have heard learned counsel for the parties and gone through the records with utmost circumspection.

5. It is apparent from the record that process fee was promptly paid by the petitioner/defendant and it was served to the Tahsildar, Raipur also before the date of hearing but despite service of summon by the Court the Tahsildar did not appear before the trial Court. He ought to have appeared before the trial Court after receipt of summon or if any difficulty was there he could have made an application for extension of time.

6. In view of the matter, the impugned order of the trial Court is hereby set aside. The State counsel is directed to keep the Tahsildar, Raipur present before the trial Court on 06.12.2018, the date fixed for hearing and he will be examined and cross-examined as according to the defendant the Tahsildar is the only witness to be examined. However, the plaintiff would be at liberty to move an application for modification of order, if aggrieved.

7. With the above-stated direction, the writ petition stands disposed of. No order as to cost(s).

8. A copy of the order be sent to the trial Court directly as well as through the concerned District Judge by email and Fax for needful and compliance.

Certified copy tomorrow.

SD/-
(Sanjay K. Agrawal)
Judge