

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**W.P.(227) No. 383 of 2019**

Bechan, S/o. Nanka, Aged About 30 Years, Occupation Agriculture, R/o. Village Batwahi, Police Station and Tehsil Lundra, District Surguja Chhattisgarh.

**---- Petitioner**

***Versus***

1. Jainath, S/o. Khasru, Aged About 70 Years,
2. Sukhnath, S/o. Modi, Aged About 45 Years,
3. Salo Bai, W/o. Modi, Aged About 60 Years

All Occupation - Agriculture, R/o. Village Batwahi, Police Station and Tehsil Lundra, District -Surguja Chhattisgarh.

4. State of Chhattisgarh, Through : Collector – Surguja, Chhattisgarh.

**-----Respondents**

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|---------------------------|----------------------------------------|
| For Petitioner            | : Mr. Nishikant Sinha, Advocate        |
| For Respondents No.1 to 3 | : Mr. J.A. Lohani, Advocate            |
| For Respondent No.4/State | : Mr. Chandra Bhushan Kesharwani, P.L. |

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**Order On Board**

**18/11/2019**

1. This petition has been brought challenging the order dated 06.11.2017, passed by the Court of 5<sup>th</sup> Civil Judge Class-II, Ambikapur, District Surguja in Civil Suit No.77-A/2014, by which the opportunity to lead evidence by the petitioner/plaintiff has been closed by the trial Court.
2. It is submitted by the counsel for the petitioner that the petitioner is plaintiff in Civil Suit No.77-A/2014. The case was fixed for plaintiff's

evidence on number of occasions and on some of the dates, the plaintiff was present along with his witnesses, before the Court, even then, he and his witnesses were not examined and the case was adjourned on such dates. On the date of hearing on 06.11.2017, the plaintiff's witnesses were present in the Court, even then, only for the reason that the plaintiff had not deposited the earlier cost imposed upon him for adjournment, his opportunity for adducing evidence was closed by the trial Court in an arbitrary manner. Hence, appropriate order be passed.

3. Counsel appearing on behalf of the respondents No.1 to 3 opposes the petition and the grounds raised in this respect. It is further submitted that, if any, opportunity is given to the petitioner then that may be given only after imposition of cost.
4. State counsel representing respondent No.4 makes formal objection.
5. On perusal of the copy of the order sheet filed along with the petition, it is found that the plaintiff and his witnesses were earlier present in Court on number of occasions, even then, the trial Court has not taken care to examine the witnesses and adjourned the case in numerous occasions.
6. The closure of evidence of the plaintiff side has been made for the petty reason that the cost imposed for adjournment in the earlier date of hearing was not deposited by the plaintiff/petitioner. There is no such provision in C.P.C. under Order 17 that the opportunity of party can be closed only for the reason that the party has failed to deposit the amount of cost. On the other hand, Section 35-B of C.P.C. provides that, if any, cost imposed upon the party and not paid that may be made a part of the decree. Therefore, the order passed by the Court

below is without application of mind, hence improper and arbitrary.

7. Accordingly, the petition is disposed off at motion stage and the impugned order dated 06.11.2017 is set-aside. The trial Court is directed to afford one opportunity to lead evidence to the petitioner. The parties are also directed to give their appearance before the trial Court on 10<sup>th</sup> of December, 2019 for fixing of date of next hearing.
8. Accordingly, the petition is disposed off.

**Sd/-**  
**(Rajendra Chandra Singh Samant)**  
Judge

Balram