

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 1024 of 2018**

1. Smt. Firo Bai Yadav, widow of late Bhagirathi Yadav, aged about 75 years, Permanent R/o. Village Potiya, Post Borai, Tahsil Dhamdha, District Durg (C.G.), at present Through : Kishun Yadav, Jagriti Chowk Shankar Nagar, durg, District Durg (C.G.)
2. Smt. Laxmi Yadav, wife of Kishun Yadav, aged about 45 years, R/o. Near Jagriti Chowk, Shankar Nagar, Durg, District Durg (C.G.)
3. Smt. Sulekha Yadav, wife of Ram Khilawan Yadav, aged about 40 years, R/o. Near Rahud High School, Cycle Dukan, Village Beltikari, Tahsil Gunderdehi, District Balod (C.G.)
4. Smt. Sulochana Yadav, wife of Itwari Yadav, aged about 35 years, R/o. Under the New Talab, Near Wasnik Kirana Store, Rajeev Nagar, Ward No. 2, District Durg (C.G.)
5. Smt. Kusum Yadav, wife of late Mohan Yadav, aged about 50 years, Kailash Nagar, Tirurdih, Durg, District Durg (C.G.)
6. Smt. Rewati Yadav, wife of Om Prakash Yadav, aged about 30 years, R/o House of Sukhram Yadav, Ahead of Nagar Nigam Zone Office, Nayapara, Village Risali, Tahsil and District Durg (C.G.)

----Appellants/Defendants**Versus**

1. Durga Prasad Yadav, son of late Bhagirathi Yadav, aged about 58 years, Occupation Government Service, R/o. Village Potiya, Post Borai, Tahsil Dhamdha, District Durg (C.G.) (Plaintiff)
2. State of Chhattisgarh, Through : The Collector, Durg, District Durg (C.G.)

---- Respondents/Plaintiffs.

For Petitioners : Shri Praveen Kumar Dhurandhar, Advocate.
 For Respondent No. 2 : Shri S.K. Agrawal, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****15/03/2019**

1. By the impugned order 04.10.2018, petitioners/defendants' right to file written statement has been closed, against which instant writ petition has been filed questioning the same.

2. Learned counsel appearing for the petitioners/defendants would submit that the trial Court is absolutely unjustified in closing the petitioners/defendants' right to file written statement, which is bad and unsustainable in law and is liable to be set aside. He further submits that the provisions contained in Order 8 Rule 10 of the CPC are directory in nature in view of the judgment rendered by the Supreme Court in the matter of **Kailash V. Nanhku**¹ and also relied upon judgment of the Supreme Court in the matter of **R.K. Roja Vs. U.S. Rayudu and another**² in support of his submissions.

3. I have heard learned counsel appearing for the petitioners and considered his submissions and also went through the record with utmost circumspection.

4. The respondent No. 1/plaintiff filed a suit of partition, in which the defendants appeared on 28.08.2017 and asked for documents, which were supplied to the defendants by plaintiff on 15.11.2017, thereafter, the defendants filed an application under Order 7 Rule 11 of the Code of Civil Procedure, which was ultimately rejected by the trial Court on 19.07.2018 and, thereafter the petitioners sought time to file written statement, which has been rejected by the trial Court by the impugned order dated 4.10.2018.

5. Supreme Court in the matter of **R.K. Roja** (supra) has held as under:-

“5. Once an application is filed under Order 7 Rule 11 of the CPC, the court has to dispose of the same before proceeding with the trial. There is no point or sense in proceeding with the trial of the case, in case the plaint (election petition in the present case) is only to be rejected at the threshold. Therefore, the defendant is entitled to file the application for rejection before filing his written statement. In case the application is rejected, the defendant is entitled to file his written statement thereafter (see **Saleem Bhai v. State of Maharashtra**³)

1 (2005) 4 SCC 480

2 (2016) 14 SCC 275

3 (2003) 1 SCC 557

6. Applying the ratio of law laid down by the Supreme Court in the above-cited case (supra) and further considering the dispute is between the brother and sisters and the fact that application under Order 7 Rule 11 of the CPC filed by the defendants/petitioners, which was ultimately rejected on 19.07.2018 and the fact that provisions contained in Order 8 Rule 10 of the CPC are directory in nature, impugned order dated 4.10.2018 is set aside and I deem it appropriate to extend the time to file written statement before the trial Court up to 25th March, 2019 subject to payment of cost of Rs. 5,000/- to the plaintiff.

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

8. Copy of this order be sent to the trial Court through E-mail / FAX for compliance and needful.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-
