

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 928 of 2019

- Kishore Kumar Das S/o Shri Nishikant Das Aged About 40 Years R/o House No. LIG-52, Pandit Ravishankar Shukla Nagar, Korba, Tahsil And District Korba, Chhattisgarh

---- Petitioner

Versus

1. Smt. Suman Jaiswal W/o Shri Jagat Ram Jaiswal R/o Pandit Ravishankar Shukla Nagar, Korba, Tahsil And District Korba, Chhattisgarh
2. State Of Chhattisgarh Through Collector, Korba, District Korba, Chhattisgarh

---- Respondents

For Petitioner : Mr. Anshul Tiwari, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

05-12-2019

Heard.

1. This petition has been brought being aggrieved by the order dated 17.10.2019 passed by the learned Court of Second Additional District Judge, Korba.
2. Learned counsel for the petitioner submits that the application filed by the respondent No.1 for permitting the production of secondary evidence in the agreement dated 15.04.2016 has been erroneously allowed by the learned Court below mentioning that the notice, as required under Section 66 of Evidence Act, is not essential because the petitioner/plaintiff has already stated in his reply that he is not in possession of that document. This observation made is erroneous

because the provision under Section 66 of Indian Evidence Act is mandatory in nature.

3. On perusal of the impugned order, it is found that the observation has been made by the learned trial Court without making reference to any legal provision. Section 66 of the Indian Evidence Act in the first part provides that secondary evidence regarding the documents referred to in Section 65 Clause A shall not be given, unless the party who proposes to give secondary evidence as previously given to the party in whose possession the document is such notice as is prescribed in law. The exemption from serving such notice has been provided in the proviso/c clause of the same Section. While passing any such order, the learned Court was bound to hold that the case was under one of the provisos of Section 66, which is not there in the impugned order. Therefore, I am of this view that this order has not been correctly passed. Hence, the impugned order is set aside and the application filed by the respondent is restored. The learned trial Court is directed to reconsider on the application and pass order in accordance with law.
4. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Monika