

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 935 of 2019

- Smt. Ruksana Bano W/o Munshi Khan Maniyar Aged About 42 Years
R/o Raigarh, Tahsil And District Raigarh, Chhattisgarh

---- Petitioner

Versus

1. Om Prakash Barai S/o Santulal Barai Aged About 30 Years R/o Kharsia,
Tahsil Kharsiya, District Raigarh, Chhattisgarh
2. Peerowati W/o Santulal Barai Aged About 40 Years R/o Kharsia, Tahsil
Kharsiya, District Raigarh, Chhattisgarh
3. Smt. Geeta Bai Barai W/o Bhushan Lal Thawait Aged About 45 Years
R/o Yuvraj Hatri Ke Pass, Raigarh, District Raigarh, Chhattisgarh
4. Smt. Bharti W/o Panchram Thawait Aged About 40 Years R/o Janjgir,
District Janjgir-Champa, Chhattisgarh
5. Meera Bai (Mrit) W/o Sudarshan Aged About 80 Years R/o
Ramgudipara, Raigarh, District Raigarh, Chhattisgarh
6. Shyambai (Mrit) W/o Ramprasad Mahobiya Aged About 55 Years R/o
Padamnabhpur (Wrongly Mention Padamnagpur) District Durg,
Chhattisgarh
7. Manbhajan Thawait S/o Sudarshan Barai, R/o Ramgudipara, Raigarh,
Chhattisgarh, Charities Trust, Raigarh

---- Respondents

For Petitioner : Mr. Amit Sharma, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

06-12-2019

1. This petition has been brought being aggrieved by the order dated
18.11.2019 passed by the Court of 7th Additional District Judge, Raigarh
dismissing the application of the petitioner under Order 22 Rule 4 (4)

read with Section 151 of C.P.C.

2. Learned counsel for the petitioner submits that the petitioner was defendant in the Civil Suit No.30-A/2009 in which the deceased-Shyama Bai was substituted as a legal representative of defendant No.1 Mira Bai. As Shyama Bai did not contest the suit by filing any W.S. or appearing in the hearing, therefore, she was declared ex-parte in the proceeding then judgment and decree was passed in favour of the plaintiffs by the trial Court, which is being challenged in the M.J.C. Civil No. 468/2019 has been filed by the petitioner.
3. As the petitioner came to know that respondent No.6 Shyama Bai has expired, therefore, she filed an application under Order 22 Rule 4 (4) read with 151 of C.P.C. praying for exemption to bring the LRs of respondent No.6 on record which has been arbitrarily rejected by the appellate Court, hence, prayed that this petition be allowed.
4. Heard learned counsel for the petitioner and perused the documents.
5. After perusing all the documents attached with the petition, it is found that respondent No.6 Shyama Bai was proceeded ex parte in the Civil Suit, is not denied by the respondent side. The provision under Order 22 Rule 4 (4) is enabling provision for the Courts to pass suitable orders for the purposes of avoiding delay and other practices which may be a cause for lingering on in the suit or other proceedings. It is also submitted by the learned counsel for the petitioner that the respondent No.6, who was the legal representative of deceased defendant No.1 had never contested the suit and remained ex-parte throughout. Therefore, it was a good case where the learned Appellate Court should have exercised the power granted under Order 22 Rule 4 (4) of C.P.C., therefore, I am of this opinion that the impugned order has not been

correctly passed. Hence, without notice to the respondent side, the petition is disposed off at the motion stage. As a consequence, the application filed by the applicant for giving exemption from bringing legal representatives of respondent No.6 is allowed.

6. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Monika