

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 132 of 2020

1. Tavinder Singh, aged 30 years, S/o. Harcharan Singh Sahni,
2. Harcharan Singh Sahni, aged 58 years, S/o. Raghubir Singh Sahni
Both R/o. Gurunanak Nagar, Raipur, Tahsil and District – Raipur (C.G.).

Presently residing at Apollo Petrol Pump, In-front of Agriculture College, Chokra Nala, Labhandih, G.E. Road, Raipur, Tahsil and District – Raipur (C.G.).

---- Petitioners

Versus

Sunita Finlease Limited, through its Director, Rakesh Gupta, aged about 36 years, S/o. H.P. Gupta, R/o. Sunita Finlease Limited, Infront of Rajkumar College, G.E. Road, District – Raipur (C.G.)

-----Respondent

For Petitioner : Mr. Rajeev Shrivastava, Advocate with
Ms. Neha Shrivastava, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

05/02/2020

1. Challenge in this petition is to the order dated 20.12.2019, passed in Civil Suit No.3-A/2012, pending before the Court of 14th Civil Judge, Class-II, Raipur, District – Raipur by which the application filed by the petitioners under Order 26 Rule 10 (2) of C.P.C. was dismissed.
2. It is submitted by the learned counsel for the petitioners that the learned trial Court has passed erroneous order without correctly appreciating the law in this respect. The petitioners are defendants in that case and the provision under Order 26 Rule

10 (2) of C.P.C. very clearly mentions that for examining the Commissioner personally in an open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation. Therefore, the petitioner had a right which has been arbitrarily closed by the trial Court and because of this order, the petitioner shall be precluded to challenge the report of the Commissioner in future if it is so required for the purpose of his defence. As such the order will operate as *res-judicata*, therefore, it is prayed that the appropriate order be passed.

3. Considered on the submissions made and also perused the documents present along with the petition.
4. The Commissioner report has been submitted before the trial Court by the Commissioner, who was appointed on the application of the respondent/plaintiff. The reason given in the impugned order for dismissal of the application is only this that that hearing of plaintiff evidence is yet to begin and it is held that if the plaintiff calls the Commissioner for his evidence, then the petitioner/defendant shall have liberty to cross-examine him.
5. The respondent/plaintiff may call or may not call the Commissioner for proof of his case, therefore, in case, if the, petitioners have requirement for summoning the Commissioner for examination on the point of correctness and validity of the report given by him, they are left with no option if the present order continued to exists as it is. Therefore, without notice to the

opposite side, this petition is disposed off and it is ordered that the present impugned order, which has been passed by the trial Court shall not come in the way of the petitioners, if in future they want to make a payer for examination of the Commissioner, before the trial Court for the purpose of proving and disproving Commissioner's report.

6. Accordingly, the petition is disposed off and the liberty is granted accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram