

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.162 of 2020

1. Vidyadhar S/o Baisakhu, Aged About 80 Years Caste Mahakul, Occupation Agriculture
 2. Kirtan, S/o Vidyadhar, Aged About 60 Years Caste Mahakul, Occupation Agriculture
 3. Kailash S/o Kirtan, Aged About 35 Years Caste Mahakul, Occupation Agriculture
 4. Yogesh S/o Kirtan, Aged About 33 Years Caste Mahakul, Occupation Agriculture
 5. Notoram S/o Vidyadhar, Aged About 55 Years Caste Mahakul, Occupation Agriculture
- (All are R/o Village Mudapara, Tahsil Patthalgaon, District Jashpur Chhattisgarh)

---- Petitioners

Versus

1. Duryodhan @ Manglu S/o Notoram, Aged About 30 Years Caste Mahakul, Occupation Agriculture, R/o Village Mudapara, Tahsil Patthalgaon, District Jashpur Chhattisgarh
2. State Of Chhattisgarh Through The Collector, Jashpur, District Jashpur Chhattisgarh

---- Respondents

For Petitioners	: Mr. Govind Dewangan, Advocate.
For State/respondent No.2	: Mr. Avinash K. Mishra, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

11-02-2020

Heard.

1. This petition has been brought being aggrieved by the order dated 21.01.2020 passed by the Civil Judge, Class-II, Patthalgaon, District-Jashpur, C.G., in Civil Suit No.15A/2014 by which the application filed under Order 16 Rule 1 of C.P.C. was dismissed.
2. Learned counsel for the petitioner submits that the

petitioners/defendants that at the stage of defence evidence filed application under Order 16 Rule 1 read with Section 151 of C.P.C. praying for summoning of witness on his behalf for the reason that the witness does not want to turn up without the notice from the Court. It is further submitted that the said application has been arbitrarily rejected by the trial Court, therefore, it is prayed that order may be passed by this Court to interfere with the impugned order.

3. Learned counsel appearing for respondent No.2 makes a formal objection.
4. On perusal of the Order 16 Rule 1 of C.P.C. and as per the submissions made by the learned counsel for the petitioner, the witness who is intended to be summoned is not a listed witness, therefore, the matter in this case is governed by Sub-Rule 3 of Order 16 Rule 1 of C.P.C. which provides that the party has to show sufficient cause for the omission to mention the name of the witness in the witness list and then the Court on being satisfied may permit and summon the witness.
5. On perusal of the copy of the application filed under Order 16 Rule 1 read with 151 of C.P.C., it is found that the reason as it is required as mentioned hereinabove is not mentioned in the application and further the prayer of the petitioner also needs reconsideration, therefore, for these reasons, this petition is allowed at the motion stage. The present impugned order shall not come in the way and the petitioner is granted liberty to file a fresh application praying for summoning of witnesses before the trial Court and the trial Court is directed to consider the same on merits and according to the provisions of law, within a week.
6. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)

Judge