

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**W.P.(227) No. 191 of 2020**

Shashank Shekhar Roy Nayak, S/o. Late Shri Sureshchandra Rai, Aged About 82 Years, R/o. Shila Bhawan, Kothi Madhuban Road Dayalband, Bilaspur, Tahsil and District Bilaspur Chhattisgarh.

**---- Petitioner**

***Versus***

1. Samar Kumar Nayak, S/o. Shri Shashank Shekhar Rai Nayak, Aged About 59 Years, Occupation Superintendent At SECL Office, R/o. Surya Vihar Colony, Street No. 3, Seepat Road, Near Basant Vihar, Bilaspur, Tahsil And District Bilaspur Chhattisgarh.
2. Vivek Kumar Rai, S/o. Shri Shashank Shekhar Rai Nayak, Aged About 52 Years, Occupation Ward Boy Chuchuiyapara, Bilaspur, R/o. Nariyal Kothi, Madhuban Road Dayalband, Bilaspur, Tahsil and District Bilaspur Chhattisgarh.
3. Vikas Nayak, S/o. Shri Shashank Shekhar Rai Nayak, Aged About 50 Years, Occupation Teacher at Government Multiple Higher Secondary School, Gandhi Chowk, Bilaspur, R/o. Nariyal Kothi, Madhuban Road Dayalband, Bilaspur, Tahsil and District Bilaspur Chhattisgarh.
4. Biman Rai, S/o. Shri Shashank Shekhar Rai Nayak, Aged About 48 Years Occupation, Central Excise Inspector Bilaspur, R/o. Shila Bhawan, Nariyal Kothi, Madhuban Road Dayalband, Bilaspur, Tahsil and District Bilaspur Chhattisgarh.
5. State of Chhattisgarh, Through : Collector, Bilaspur, Tahsil and District Bilaspur Chhattisgarh.

**-----Respondents**

---

For Petitioner

: Mr. Arvind Shrivastava, Advocate

---

**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**Order On Board**

**18/02/2020**

1. This petition has been brought against the order dated 04.10.2020, passed by the 4<sup>th</sup> Civil Judge Class-II, Bilaspur in Civil Suit No.216-A/2017, dismissing the application under Order 23 Rule 1 of C.P.C.

2. The petitioner had filed an application under Order 23 Rule 1 of C.P.C. making prayer that because of his old age and illness, he does not want to prosecute the civil suit further. Further he had also prayed that as there is already civil suit filed and pending by the respondent No.1, 2 and 4, in which he is defending himself through counsel, therefore, for the present he wants to withdraw the civil suit and sought liberty to institute a fresh suit, if it may be required in future.
3. It is submitted that the learned trial Court has made incorrect observation in the impugned order that there is a formal defect present in the civil suit filed by the petitioner, which has not been the statement in the application and also that there are no other reason mentioned along with the formal defects, therefore, the application has been rejected.
4. Considered on the submissions. On perusal of the impugned order and all the other documents present in the petition, I am of this view that the petitioner had given specific reason that because of old age and ailments and also because of another civil suit pending of the same nature filed by the respondents, in which he is defending himself, he wants to withdraw the suit. Therefore, the reason was clearly mentioned and there is no statement that his suit is suffering from some formal defects. Therefore, the observation made that the suit filed by the petitioner is suffering from some formal defects is erroneous and also this observation that there is no other grounds present is

also erroneous. The application filed by the petitioner was unopposed. Hence, this application should have been allowed. Hence, this petition is allowed and application is also allowed. The impugned order is set-aside. Petitioner is granted liberty to withdraw the suit accordingly. The civil suit is dismissed on the ground that it has been withdrawn by the petitioner himself and the liberty is granted to him to file fresh civil suit in future if it is so required or advised by the counsel.

5. Accordingly, the petition is disposed off.

**Sd/-**  
**(Rajendra Chandra Singh Samant)**  
Judge