

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 370 of 2020

Smt. Rekha Bai, W/o Shri Babulal Gupta, Aged About 62 Years, R/o Kachharipara, Police Station and Tahsil Baikunthpur, District- Koriya (C.G.)

--- Petitioner

Versus

1. Geeta Prasad Nema, S/o Late Jamuna Prasad, Aged About 36 Years.
2. Govind Prasad Nema, S/o Late Jamuna Prasad, Aged About 58 Years.
3. Naveen Kumar Nema, S/o Narmada Prasad Nema, Aged About 35 Years.

Respondent No. 1 to 3 are R/o Village Schoolpara, Baikunthpur, Police Station and Tahsil Baikunthpur, District- Koriya (C.G.)

4. Smt. Aabha Nema, W/o Tarun Nema, Aged About 35 Years, R/o Village Kulri, Tahsil Gaadarwara, District- Narsinghpur (M.P.)
5. Smt. Manju Nema, W/o Nitin Nema, Aged About 30 Years, R/o Village Pipariya, District- Hoshangabad (M.P.)
6. Smt. Mamta Nema, W/o Shailendra Nema, R/o Behind Saanchi High School, Post Pali, District- Raysen (M.P.)
7. Smt. Shakun, D/o Late Jamuna Prasad Nema, Aged About 60 Years, R/o Village Merek Station, Tahsil Surak Bel, District Narsingh (M.P.)
8. Praveen Nema, S/o Late Narmada Nema, Aged About 25 Years, R/o Schoolpara, Baikunthpur, District- Koriya (C.G.)
9. Smt. Prabha, W/o Late Narmada Prasad Nema, Aged About 58 Years, R/o Schoolpara, Baikunthpur, District- Koriya (C.G.)

10. State of Chhattisgarh, Through: the Collector, Koriya (C.G.)

--- Respondents

For Petitioner : Mr. Ashok Kumar Shukla, Adv.

For State/ Respondent No. 10 : Mr. Siddharth Dubey, Dy. G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

22/06/2020

1. This petition has been brought praying for invoking power under Article 227 of the Constitution of India challenging order dated 22.02.2020 (Annexure P/1) and 02.03.2020 (Annexure P/2) passed by the trial court in Civil Suit No. 84A/2019.
2. Learned counsel for the petitioner submits that the petitioner is plaintiff in civil suit and the suit was fixed for hearing on 22.02.2020. The petitioner/ plaintiff and his counsel could not give appearance before the court in first half and it was at 12 noon of that day, the opportunity of the plaintiff for producing evidence was closed by the trial court. The plaintiff counsel and the witnesses to be examined, both gave appearance before the trial court on the same day and their appearance has been recorded in the order-sheet. The petitioner/ plaintiff then filed an application under Section 151 of the C.P.C. praying for opportunity of hearing of the plaintiff's case, but the same has been dismissed by order dated 02.03.2020, thereafter the case is now being listed for recording of defendants witnesses.
3. It is further submitted that the learned trial court has not given any consideration that it was first half of that day and turning up of the witnesses and the parties coming from remote areas is likely to

take time. Further, the non-appearance of the witnesses and the counsel for the petitioner is bonafide, therefore, the opportunity should have been given for recording of one last witness of the plaintiff, hence, it is submitted that both the orders suffer from infirmity. The proper and complete opportunity has not been given to the petitioner to present his case and if it is allowed to continue, then, the plaintiff will not be able to get justice, therefore, it is prayed that impugned orders be interfered with.

4. Learned State counsel appearing for respondent No. 10 makes formal objection.
5. I have heard learned counsel for the parties and perused the documents placed on record.
6. The certified copy of the orders, which shows that on the date i.e. on 22.02.2020, the first call for the plaintiff and the witnesses was made at 11.00 a.m., then second call was made at 11:30 a.m. and then, third call was made at 12:00 noon and thereafter, the opportunity of the plaintiff was closed. The order-sheet also mentions that later on, the counsel and his witness gave appearance and also filed an application under Section 151 of the C.P.C. which has been decided vide order dated 02.03.2020 rejecting the same.
7. On perusal of these order and considering the submission made by learned counsel for the petitioner, I am of the view that this petition can be disposed of at motion stage, therefore, the petition is disposed. The order dated 22.02.2020 (Annexure P/1) & 02.03.2020 (Annexure P/2) are set aside and the trial court is directed to give one opportunity to the plaintiff/petitioner for

producing remaining witnesses, before proceeding to record evidence of the defendants.

8. In view of the above, the instant writ petition stands disposed of at motion stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Arun