

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 399 of 2020

Pankaj Shrivastawa, S/o. Rameshwar Shrivastawa, Aged About 34 Years, R/o. Kalibadi Road, Infront Of State Bank, Haldi Badi, Chirmiri, Police Station Bada Bazar, Chirmiri, Tehsil Cirmiri, Post Haldi Badi, District Korea Chhattisgarh.

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Versus

1. Smt. Chandramani Devi Kushwaha, D/o. Late Laxman Kushwaha, aged aout 63 Years, W/o. Dadan Ram Kushwaha, R/o. Ward No. 03, Dairy Farm Road, Gandhi Nagar, Ambikapur, Police Station Gandhi Nagar, Post and Tehsil Ambikapur, District Surguja Chhattisgarh.
2. Smt. Kalawati Kushwaha, D/o. Late Laxman Kushwaha, Aged About 67 Years, W/o. Late Denath Kushwaha, R/o House No. 65 Devlapara, Bhaiyathan, Police Station And Post Bhaiyathan Police Station And Post Bhaiyathan, District Surajpur Chhattisgarh.
3. Ravikanth Singh S/o Late Narendra Singh Aged About 43 Years R/o Pratappur Road, Village Sargawa, Ambikapur , Post Sakalo, Police Station Gandhi Nagar, Tehsil Ambikapur, District Surguja Chhattisgarh.
4. Dinesh Kumar Singh S/o Ramadhar Singh Aged About 56 Years R/o Infront Of Mishra Hotel, Gandhi Nagar. Behind Holy Cross School, Banaras Road, Ambikapur, Police Station Gandhi Nagar, Tehsil And Post Ambikapur, District Surguja Chhattisgarh.
5. Bharat Singh, S/o. Shri P.S. Sisaudia, Aged About 45 Years, R/o. Sai Mandir Road, Rawat Residency, Bhagwanpur , Ambikapur , Police Station Gandhi Nagar, Ambikapur , Tehsil And Post Ambikapur , District Surguja Chhattisgarh.
6. Neeraj Prakash Pandey S/o Shri Ved Prakash Pandey Aged About 44 Years R/o House No. 12 /192, Ring Road , Near Mahamaya Petrol Pump, Namnakala, Ambikapur , Tehsil And Post Ambikapur , District Surguja Chhattisgarh.

7. Rajesh Singh S/o Lalji Singh Aged About 48 Years R/o Godhanpur , Ambikapur , Police Station Gandhi Nagar, Tehsil And Post Ambikapur , District Surguja Chhattisgarh.
8. Nilesh Singh S/o Late Niranjana Singh Aged About 43 Years R/o Sarpanchapura, Infront Of Kendriya Vidyalaya , Village Bhagwanpurkhurd, Police Station Gandhi Nagar, Tehsil And Post Ambikapur, District Surguja Chhattisgarh.
9. State Of Chhattisgarh, Through Collector, Surguja, Ambikapur , District Surguja Chhattisgarh.

-----Respondents

For Petitioner : Mr. Manoj Paranjpe, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

14/08/2020

1. This petition has been brought being aggrieved by the order dated 15.07.2020, passed by the Court of Fifth Additional District Judge, Ambikapur in Civil Suit No.2-A/2020, dismissing the application filed by the petitioner/plaintiff under Order 39 Rule 3 of C.P.C. in an arbitrary manner.
2. It is submitted by the learned counsel for the petitioner that the impugned order has been passed without application of mind making a mention that established principle of natural justice is this that no order should be passed without hearing the other party. It is submitted that the learned trial Court has failed to appreciate the proviso of Order 39 Rule 3 of C.P.C., which empowers the Court to consider and grant an ex-parte injunction.

Therefore, the trial Court has refused to exercise the jurisdiction vested in it under the provisions mentioned above. Reliance has been placed on the judgment of Supreme Court in case of ***Shiv Kumar Chadha Vs. Municipal Corporation of Delhi and Others***, reported in ***(1993) 3 SCC 161***.

3. Considered on the submissions and also perused the impugned order. By the impugned order, the learned trial Court has dismissed the application under Order 39 Rule 3 of C.P.C. giving reasons that according to the principle of natural justice, no order can be passed without hearing the other party.
4. The proviso to Rule-3 of Order 39 C.P.C. very clearly provides that the Courts have power to grant ex-parte injunction after recording reasons for the same, if it is found that object of granting injunction would be defeated by delay. Rule 3-A of the Order 39 further clarifies that any injunction is granted without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted.
5. Therefore, the provision is very clear and it is the duty of the Court to consider on any application filed under Order 39 Rule 3 of C.P.C. and pass order either of granting ex-parte injunction or rejecting the same. In the present case, the learned trial Court has not made any approach to consider whether the purpose of granting of injunction would be defeated by delay or not and whether there are other reasons present or not for passing

suitable order. Therefore, it appears that the learned trial Court has failed to exercise the power and jurisdiction vested in it under Order 39 Rule 3 of C.P.C.

6. Hence, this petition is disposed off at motion stage. The impugned order dated 15.07.2020 is set-aside. The application filed by the petitioner under Order 39 Rule 3 of C.P.C. is restored. The learned trial Court is directed to consider on the application afresh without being influenced by any of the observation made in this order and pass order in accordance with law.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram