

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 418 of 2019

Nitish Gole S/o Shri Munna Gole Aged About 35 Years R/o Near Bhatkhande Sangeet Vishwavidyalaya, Tikrapara, Police Station Civil Lines, Bilaspur, District Bilaspur Chhattisgarh. (Defendant).

---- Petitioner

Versus

Sadhuram Rahuja S/o Late Shri Dhumanmal Rahuja Aged About 64 Years R/o C/o Dharmesh Rao Sindhe Marathapara Dhamtari, Tahsil, Civil And Revenue District Dhamtari Chhattisgarh. (Plaintiff)

---- Respondent

For Petitioner	: Mr. Sunil Sahu, Advocate.
For Respondent	: Mr. Vijay Kumar Mishra, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

19-02-2020

1. This petition has been brought being aggrieved by the order dated 23.1.2019 passed by the Learned First Additional Judge to the Court of First Civil Judge, Class-II, Dhamtari in Civil Suit No. 16B/ 17 dismissing the application filed under Order XXXIII Rule 9 of the CPC.
2. It is submitted that the respondent is a man of means; he is owner of several properties and other movable articles, which he has suppressed and prayed before the Court to contest the suit as an indigent person and the application has been allowed only on the basis of the report of the Revenue Officer. Therefore, the application was filed to recall the permission granted to the respondent for contesting the suit as an indigent person which has been erroneously rejected and no opportunity was given to the petitioner to bring evidence for the statement he had made in his application.

3. Learned counsel for the respondent opposes the submissions and submits that the enquiry has been made by a proper authority and it is reported that the respondent is an indigent person. No error has been committed by the trial Court in allowing the application and there is also no error in dismissing the application filed under Order XXXIII Rule 9 of the CPC.
4. Heard counsel for both the parties and perused the documents present on record.
5. On perusal of the documents present alongwith the application filed, I am of this view that the petitioner should have been granted one opportunity to submit proof for the statement he has made in the application filed by him under Order XXXIII Rule 9 of the CPC. Therefore, without affording any such opportunity, the order of dismissal has been passed by the trial Court and on that basis, it can be held that the learned trial Court has not exercised its jurisdiction properly.
6. Accordingly, the impugned order dated 23.1.2019 is set aside and the application filed by the petitioner is restored. Learned trial Court is directed to reconsider the application after affording the petitioner an opportunity to produce evidence in support of the application made by him and also grant the respondent opportunity to rebut the same. On that basis, the application shall be decided on merits and in accordance with law.
7. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge