

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 472 of 2020

Dipanker Sardar S/o Krishnapad Aged About 35 Years R/o Village PV 128, Jaishri Nagar , Patwari Halka No. 46, Tahsil Pakhanjore, District Uttar Baster Kanker Chhattisgarh.

---- Petitioner

Versus

1. Tahsildar, Pakhanjore Tahsil Office Pakhanjore, District Uttar Bastar Kanker Chhattisgarh.
2. The State Of Chhattisgarh through Collector, Collectorate Office, District Uttar Baster Kanker Chhattisgarh.

---- Respondents

For Petitioner	: Shri Parag Kotecha, Advocate.
For the Respondents/ State	: Shri Gurudev I. Sharan, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

04-12-2020

Heard.

1. This petition has been brought under Article 227 of the Constitution of India, seeking interference of this Court in the matter of quashing the impugned order.
2. Learned counsel appearing for the petitioner submits that the petitioner has filed a civil suit against the respondents which is registered as Civil Suit No. 4A of 2020 and in that suit an application under Order XXXIX Rule 1 and 2 of the CPC was filed. Learned trial Court ordered for issuance of notice on 7.9.2020. The notices on civil suit and the application both were issued to the respondents which were returned served and because of the non-appearance of the respondents/ defendants on 14.9.2020, the Court ordered for proceeding *ex parte*. The petitioner then insisted on hearing the application under Order XXXIX Rule 1 and 2 of the CPC but the learned trial Court has passed

an order on 27.10.2020 and 2.11.2020, for issuing notices to the respondents/ defendants on the application under Order XXXIX Rule 1 and 2 of the CPC, is erroneous. It is further submitted that after passing the order of *ex parte* proceeding against the respondents issuance of fresh notice to the respondents on the application for temporary injunction is totally uncalled for and against the provisions of law. Hence, the order passed is erroneous and liable to be quashed.

3. Learned State counsel appearing for the respondents submits that at present, he has no instructions from the respondents' side, however, he opposes the submissions made by the petitioner's side.
4. Considered the submissions. The present petition is disposed off at motion stage. The orders passed by the learned trial Court on 19.10.2020, 27.10.2020 and 2.11.2020 with respect to the issuance of fresh notice to the respondents' side is quashed to that extent. Learned trial Court is directed to take up the matter for hearing on the application under Order XXXIX Rule 1 and 2 of the CPC and the same be disposed off as soon as possible, preferably, within a period of one month.
5. Accordingly, the petition is disposed off at motion stage. It is also ordered that there shall be a status-quo with respect to the subject matter of the suit for a period of one month from today. It is further made clear that the learned trial Court shall not be influenced by the order of status-quo passed by this Court, while deciding the application under Order XXXIX Rule 1 and 2 of the CPC, which shall be decided according to the merits of the case.

Sd/-
(Rajendra Chandra Singh Samant)
Judge