

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WP227 No. 894 of 2019**

Nagesh Kumar Mishra S/o Jagdish Prasad Mishra Aged About 42 Years  
R/o Tokapal, Tahsil Jagdalpur, District Bastar Chhattisgarh.

**---- Petitioner**

**Versus**

1. Shanti Bai Vais W/o Neelu Ram Aged About 35 Years R/o Village Raikot, Thangudipara, P. S. Kodenar, Tahsil Jagdalpur District Bastar Chhattisgarh, District : Bastar(Jagdalpur), Chhattisgarh
2. Tinkesh Kumar Vais S/o Sukaru Ram Vais Aged About 12 Years Minor Through Legal Guardian Mother Shanti Bai (Respondent No. 01), R/o Village Raikot, Thangudipara, P. S. Kodenar, Tahsil Jagdalpur District Bastar Chhattisgarh, District : Bastar(Jagdalpur), Chhattisgarh
3. Neelu Ram Vais S/o Sukaru Ram Vais Aged About 40 Years R/o Village Raikot, Thangudipara, P. S. Kodenar, Tahsil Jagdalpur District Bastar Chhattisgarh, District : Bastar(Jagdalpur), Chhattisgarh
4. Managing Director Navbharat Fuse Company, Ring Road No. 01, Telibandha, Near Airtel Office, Raipur District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
5. Branch Office National Insurance Company Limited Near Main Post Office, Tahsil Jagdalpur District Bastar Chhattisgarh, District : Bastar(Jagdalpur), Chhattisgarh

**---- Respondents**

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|---------------------------|--------------------------------------|
| For Petitioner            | : Shri Praveen Dhurandhar, Advocate. |
| For Respondents No.1 to 3 | : Shri Anand Kumar Gupta, Advocate.  |
| For Respondent No.4       | : Shri Atanu Ghosh, Advocate.        |
| For Respondent No.5       | : Shri P.K. Tulsyan, Advocate.       |

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

**Order on Board**

**03-02-2020**

1. Heard.
2. This petition has been brought being aggrieved by the order dated 1.4.2019 passed in Case No. 24 of 2018/EC Act/ Fatal, by the Commissioner, Employees Compensation Act/ the Presiding Officer of the Labour Court, Jagdalpur.

3. It is submitted by counsel for the petitioner that respondents No.1 to 3 had filed a claim case registered as 27 of 2010/ EC Act/ Fatal, which was decreed *ex parte* against the petitioner on 26.4.2017. The petitioner moved an application under Order IX Rule 13 of the Code of Civil Procedure praying to set aside the award by the Labour Court against him. His application has been dismissed by the learned Labour Court without following the procedure as it is required to be completed before passing any order on application under Order IX Rule 13 of the CPC. Placing reliance on the judgment of the Madhya Pradesh High Court in the case of **Babulal Ramcharan and Others vs. Chhotekhan Lal Khan** reported in **1976 MPLJ 843**, it is submitted that the learned Madhya Pradesh High Court has very clearly held that the application under Order IX Rule 13 of the CPC cannot be disposed off without affording the parties reasonable opportunity to produce evidence, therefore, this petition be allowed and the relief be granted to the petitioner.
4. It is submitted by counsel for the respondents that the learned Court below has not committed any error in passing the impugned order, therefore, this petition is without any substance, which may be dismissed.
5. Heard counsel for both the parties and perused the documents present on record.
6. On perusal of the impugned order and the other documents which include the order-sheets of the proceedings before the learned Labour Court on the application filed under Order IX Rule 13 of the CPC, it is found that no opportunity has been given to the petitioner to produce evidence. Although Order IX Rule 13 of the CPC does not specifically mention regarding the procedure for decision of the application filed but

it can be made out from the wording in the provision itself, which says that the party applying has to satisfy the Court that the summons were not duly served on him or there had been any sufficient cause from appearing when the suit was called for hearing. Therefore, the mode of satisfying the Court is only by way of bringing evidence in this respect when the other party is contesting the application. Therefore, in such cases the opportunity of hearing has to be given to the parties and hearing includes recording of the evidence and filing of documents also. Therefore, as it is held in **Babulal Ramcharan and Others** (supra) and also it has been observed in this order, I am of this view that the learned Court below has committed an error by passing the impugned order without affording opportunity to the parties to produce the evidence before the Court. Therefore, there is a procedural flaw in the impugned order, and as such, the petition is allowed at the motion stage and the impugned order is set aside. However, the application under Order IX Rule 13 of the CPC is restored and the learned Court below is directed to afford opportunity to both the parties for producing evidence before that Court and then pass orders in accordance with law.

7. Accordingly, petition is disposed off. The parties are directed to give appearance before the Court below on **16<sup>th</sup> March, 2020**.

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