

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.1018 of 2019

- Kuldeep Singh S/o Late Balwant Singh Aged About 52 Years R/o Santra Badi, Behind Sahu Dairy, Tehsil And District Durg, Chhattisgarh.

---- Petitioner

Versus

- Md. Tahir Chauhan S/o H. M. Chauhan (Haji Manudin) Aged About 43 Years R/o Polsaipara, Police Station Mohan Nagar, District Durg, Chhattisgarh

---- Respondent

For Petitioner : Mr. B.P. Singh, Advocate.

For Respondent : Mr. Rahim Ubwani, 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 28.11.2019 passed by the trial Court dismissing the application filed by the petitioner under Order 18 Rule 1 of C.P.C.
2. Learned counsel for the petitioner submits that respondent has filed a Civil Suit against the petitioner praying for relief of specific performance of contract and other reliefs. The petitioner who is defendant in that case has denied the pleadings in plaint and has also pleaded in his defence. The trial Court has framed issues vide order dated 26.04.2019 in the order sheet, ordering that according to the issues framed, the burden of proof is on the petitioner/defendant and he was ordered to lead evidence first.
3. The petitioner then filed application under Order 18 Rule 1 of C.P.C.

praying that it is the burden of the plaintiff to prove the existence of agreement to sale and that he is entitled for the relief prayed for. Therefore, this is the burden on the plaintiff to lead evidence first, hence, the plaintiff should be directed to lead evidence. The learned trial Court that is the Court of District Judge, has dismissed this application erroneously holding that according to the issues framed, the burden is upon the petitioner/plaintiff. Therefore, he has to initiate and lead the evidence. It is further submitted that the impugned order is passed in incorrect exercise of jurisdiction, which is needed to be set aside.

4. Learned counsel for respondent opposes the submissions and submits that the learned trial Court had not committed any error in passing the impugned order and there is no need of interference in the same.
5. Heard learned counsel for the parties and also perused the documents present.
6. Perused the copy of plaint and written statement, that is filed along with the petition, the plaintiff has pleaded regarding the execution of agreement and other necessities and also about his entitlement for the relief of specific performance. Petitioner/defendant has denied the pleadings and also raised his defence that in fact there been a transaction of loan between him and the plaintiff, that is the respondent. The petitioner/defendant has not filed any counter-claim to seek relief in his favour. Therefore, the matter to be decided in the Civil Suit is only to this extent whether the respondent/plaintiff is entitled for the grant of relief or not. The case of defendant is only of rebuttal along with the defence raised to rebut the claim of the plaintiff.
7. On perusing the copy of the issues framed, it is found that the issues have been framed on the basis of the pleadings made by the

petitioner/defendant and there is not a single issue framed on the basis of the pleadings made by the plaintiff. The normal rule of framing issue is based on the pleadings made which have been disputed by the other side. The burden of proof is upon the respondent/plaintiff that if he does not prove his pleading. then his case would fail. Therefore, the framing of issues by the trial Court itself is found to be improper that is needed to be framed correctly in accordance with the pleadings and the assertion on the statement made by the parties, therefore, the impugned order needs interference. The petition is disposed off, the impugned order is set aside and at the same time, the learned trial Court is directed to recast the issues in accordance with the burden which is upon the plaintiff to prove his case.

8. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge