

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.136 of 2021

- Daya Shankar Dubey S/o Shri Satya Narayan Dubey, Aged About 65 Years Saw Mill R/o Village Sirsa Khurd, Patwari Halka No. 8, Block Development And Circle Durg Tahsil And District Durg (Chhattisgarh)

---- Petitioner

Versus

1. Laxmi Shankar Dubey S/o Satya Narayan Dubey, Aged About 55 Years R/o 60-A, Civil Lane (Behind Roadways Bus Stand) Village Baijalpur, Post Office Bigar Ganj, District Pratnagarh (U.P.)
2. State Of Chhattisgarh Through District Collector/ Secretary Durg District Collector Office Durg (Chhattisgarh)

---- Respondents

For Petitioner – Mr. Ashok Patil, Advocate.

For State/respondent No.2. – Mr. Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

02-03-2021

Heard.

1. This petition has been brought being aggrieved by the order dated 05.02.2021, by which the Court of 6th Civil Judge, Class-II, Durg, C.G. has dismissed the application of the petitioner under Section 151 of Cr.P.C.
2. It is submitted by the learned counsel for the petitioner that the petitioner is defendant in the Civil Suit No.31-A/2010. After the framing of issues, on an application filed by the respondent No.1/plaintiff, issue No.1, 2 and 3 have been deleted vide order dated 30.01.2021 and additional issues were framed. The petitioner had objection regarding which he filed application under Section 151 of C.P.C. to restore the deleted

issues No.1, 2 and 3, which has been dismissed arbitrarily by the trial Court, hence, this petition.

3. Considering on the submissions, the issues No.1, 2 and 3 that have been deleted are not based on any basic pleading. On the contrary, they were the issues that the respondent No.1/ plaintiff was supposed to prove in the case, however, it was on the application of the respondent No.1 himself that these issues have been deleted, which implies that the respondent No.1 is not interested to discharge his burden for the issues No.1, 2 and 3. The additional issues No.12 and 13 that have been framed have to be proved by the petitioner/defendant as it is his burden to prove his entitlement for the counter claim that has been filed.
4. After considering on the submissions and also after the perusal of the copy of plaint, written statement and other documents filed, I am of this view that the learned trial Court has not committed any error. Therefore, this petition is disposed off at the motion stage.
5. On the request of the learned counsel for the petitioner, the learned trial Court is directed to expedite the matter.
6. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika