

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 229 of 2021

Surendra Prasad Shrivastava, S/o. Late Ambika Prasad Shrivastava, aged about 75 years, R/o. Fazal Bada, Behind City Dispensary, Old High Court, Tehsil and District Bilaspur Chhattisgarh.

---- Petitioner

Versus

Neetu Shrivastava, W/o. Late Pankaj Shrivastava, aged about 40 years, R/o. Infront of Old High Court, Jaiswal Gali, Tehsil and District Bilaspur Chhattisgarh.

-----Respondents

For Petitioner	: Mr. Manoj Paranjpe, Advocate with Mr. Pawan Shrivastava & Mr. Pushkar Sinha, Advocates
----------------	--

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

01/04/2021

1. This petition has been brought seeking indulgence under Article 227 of the Constitution of India to quash the order dated 17.03.2021, passed by the Additional Principal Judge, Family Court, Bilaspur granting opportunity to the respondent to produce evidence subsequent to closure of her evidence.

2. It is submitted by the learned counsel appearing for the petitioner that on 07.01.2021, the date of hearing, the opportunity of the respondent for producing evidence was closed and the case was fixed for non-applicant's evidence. During the pendency of this proceeding for recording of non-applicant's evidence, an application was filed by the respondent on 15.02.2021, praying to grant her opportunity to produce evidence. This application has been allowed by the impugned order and the respondent has been granted opportunity to produce evidence in the manner as mentioned in the impugned order.
3. It is submitted by the counsel for the petitioner, that in fact the impugned order is recalling of the order dated 07.01.2021. There had been no reasons mentioned for recall of the order, which may be grounds for consideration in the matter of review of a previous order. Reliance has been placed on the judgment of Supreme Court in case of **Budhia Swain & Ors. Vs. Gopinath Deb & Ors.**, reported in **(1994) 4 SCC 396**, in which it was held that power to recall its own order by a Court against an order, which was obtained by fraud practiced upon the Court or when the Court is misled by a party, or when the Court itself commits a mistake, which prejudices a party. Nothing of this sort has been happened in this case and no such ground was raised by the respondent in her application filed on 15.02.2021, therefore, there had been no reason to allow the application. It is also pointed out that the impugned order has been passed without

setting aside the order dated 07.01.2021, therefore, the order passed is erroneous and unsustainable.

4. Considered on the submissions and perused all the documents filed along with the petition.
5. Respondent has filed an application under Section 18 and 19 of the Hindu Adoption and Maintenance Act, 1956, which is being contested by the petitioner/non-applicant. Respondent side was granted opportunity for producing evidence, however, her opportunity was closed by order dated 07.01.2021, which has again re-opened by the impugned order.
6. It is a peculiar case, in which, the learned Family Court has considered on this point, that the respondent should have given proper opportunity for producing evidence after closure of her evidence by the order of the Court. The submission of the petitioner side is that the impugned order is recall of the earlier order needs consideration.
7. Under Section 7 (1) of the Family Court Act, it is provided that Family Court shall have and exercise all the jurisdiction exercisable by any district Court or any subordinate civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation. The explanation includes the proceeding under Hindu Adoption and Maintenance Act. Hence on the strength of this provision and Section 10 of the Family Courts, Act, 1984, in which, there is clear provision that Code of Civil Procedure shall be applicable to

the proceeding, before the Family Court, the Family Courts are empowered accordingly. Exercise of power by the learned Family Court in passing the impugned order appears to be in the exercise of inherent power that are available under Section 151 of C.P.C.

8. In case of **K.K. Velusamy Vs. N. Palanisamy**, reported in **(2011) 11 SCC 275**, it has been held by the Supreme Court in para 12 and 22, which are as under :-

“12. The respondent contended that section 151 cannot be used for re- opening evidence or for recalling witnesses. We are not able to accept the said submission as an absolute proposition. We however agree that section 151 of the Code cannot be routinely invoked for reopening evidence or recalling witnesses. The scope of section 151 has been explained by this Court in several decisions {See : Padam Sen vs. State of U.P.; Manoharlal Chopra vs. Seth Hiralal; Arjun Singh Vs. Mohindra Kumar, Ram Chandra and Sons Sugar Missl (P) Ltd. Vs. Kanhay Lal; Nain Singh Vs. Koonwarjee; The Newabganj Sugar Mills Co.Ltd. vs. Union of India; Jaipur Mineral Development Syndicate vs. Commissioner of Income Tax, new Delhi; National Institute of Mental Health & Neuro Sciences vs. C. Parameshwara, and Vinod Seth Vs. Devinder Bajaj}. We may summarize them as follows:

(a) Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognizes the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is 'right' and undo what is 'wrong', that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

(b) As the provisions of the Code are not exhaustive, [section 151](#) recognizes and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is co-extensive with the need to exercise such power on the facts and circumstances.

(c) A Court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or necessary implication exhaust the scope of the power of the court or the jurisdiction that may exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or a manner inconsistent with such provisions. In other words the court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is provided in the Code.

(d) The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes mentioned in Section 151 of the Code when the matter is not covered by any specific provision in the Code and the exercise of those powers would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of the Legislature.

(e) While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation and the exercise of power depends upon the discretion and wisdom of the court, and the facts and circumstances of the case. The absence of an

express provision in the code and the recognition and saving of the inherent power of a court, should not however be treated as a carte blanche to grant any relief.

(f) The power under [section 151](#) will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court.

22. In this case, we are satisfied that in the interests of justice and to prevent abuse of the process of court, the trial court ought to have considered whether it was necessary to re-open the evidence and if so, in what manner and to what extent further evidence should be permitted in exercise of its power under section 151 of the Code. The court ought to have also considered whether it should straightway recall PW1 and PW2 and permit the appellant to confront the said recorded evidence to the said witnesses or whether it should first receive such evidence by requiring its proof of its authenticity and only then permit it to be confronted to the witnesses (PW1 and PW2). ”

9. The principle laid down in *K.K. Velusamy (supra)* has been fortified in the case **Ram Rati Vs. Mange Ram (dead) through Legal Representatives & Ors**, reported in **(2016) 11 SCC 296**.
10. Hence, in view of the ratio, which has been laid down by the Supreme Court in the above mentioned judgments, the trial Court is required to give consideration whether it is necessary to reopen the evidence and if it is found necessary then the further evidence can be permitted in exercise of power under Section

151 of C.P.C. Hence, on this basis I am of this view that impugned order does not suffer from any infirmity and this petition is not fit to be admitted for hearing.

11. Accordingly, this petition is dismissed and disposed off at admission stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram