

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (227) No. 674 of 2021**

1. Aatmaram S/o Setram Patel, aged about 52 years,
 2. Asharam S/o Setram Patel, aged about 42 years, Occupation Job,
- Both are R/o village Pamgarh, Tahsil Kharsiya, District Raigarh (C.G.).

---- Petitioners

Versus

1. Chanderram S/o Mitthuram Patel, aged about 39 years, Occupation Farmer, R/o Village Pamgarh, Tahsil Kharsiya, District Raigarh (C.G.).
2. State of Chhattisgarh, Through Collector, Raigarh District Raigarh (C.G.)

--Respondents

For Petitioners	:	Mr. Sanjay Agrawal, Advocate
For Respondent No.2	:	Mr. Wasim Miyan, Advocate
For Respondent No.1	:	None.

Hon'ble Shri Justice Deepak Kumar Tiwari
Order on Board

13/12/2021

1. The instant writ petition under article 227 of the Constitution of India has been preferred against the order dated 30/10/2021 passed in Civil Suit No. 6A/10 (Aatmaram and another v. Chanderram and another) by the First Civil Judge, Class-2 whereby application under order 18 Rule 17 of the Code of Civil Procedure (for short 'the CPC') for further cross-examination of plaintiffs' witnesses filed by defendant No. 1 has been allowed.
2. Facts of the case are that the petitioners/plaintiffs filed a suit for declaration of title, possession and permanent injunction against

respondent No.1/defendant No.1 on 26/04/2010. In the said case, the plaintiffs' evidence were closed in the year 2017. Defendant No.1 filed an affidavit under Order 18 Rule 4 of the CPC on 13/07/2017. After submitting the affidavit, defendant No.1 with an intention to delay the cross-examination of himself, filed an application under Order 12 Rule 5 of the CPC to cause the delay which was rejected by the Court below vide its order dated 24/07/2019. After closure of evidence of plaintiffs and at the stage of evidence of defendants, the defendant No.1 filed an application under Order 18 Rule 17 of the CPC. The said application was opposed by the plaintiffs but by the impugned order the said application has been allowed.

3. Counsel for the petitioners submits that respondent No.1/defendant No.1 adopted lingering tactics to commit delay in delivery of justice and the order passed by the Court below is completely against the provisions of the CPC, therefore, prayer is made to set-aside the impugned order.
4. I have heard counsel for the petitioners and perused the petition as well as the documents annexed with it.
5. In **K.K. Velusamy v. N. Palaanisamy on 30 March, 2011 (SC) reported in (2011) 11 SCC 275**, it has been held in paragraphs 11 & 12 as under:-

“11. The Code earlier had a specific provision in Order 18 Rule 17A for production of evidence not previously known or the evidence which could not be produced despite due diligence. It enabled the court to permit a party to produce any evidence even at a late stage, after the conclusion of his evidence if he satisfied the court that even after the exercise of due diligence, the evidence was not within his knowledge and could not be

produced by him when he was leading the evidence. That provision was deleted with effect from 1.7.2002. The deletion of the said provision does not mean that no evidence can be received at all, after a party closes his evidence. It only means that the amended structure of the Code found no need for such a provision, as the amended Code contemplated little or no time gap between completion of evidence and commencement and conclusion of arguments. Another reason for its deletion was the misuse thereof by the parties to prolong the proceedings under the pretext of discovery of new evidence.

12. The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for re-opening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.”

6. In the present case, respondent No.1/defendant No.1 had filed certain documents which were allowed by the Court below on 04/01/2020 as revealed in the impugned order. The Court below observed that as the evidence of plaintiffs had closed and the documents accepted later on were necessary to decide the *lis*. So, the application filed by defendant No.1 to examine the plaintiffs, after imposing cost of Rs. 1000/- and

giving an opportunity to ask question limited to the said documents were allowed which in the opinion of this Court appears to be legal and proper and does not call for any interference. It is ultimately within the Court discretion, if it deems fit to allow such an application. The provisions of Order 18 rule 17 of the CPC interprets to include the application filed by the parties for recalling the witnesses. The main purpose of the said rule is to enable the Court while trying a suit to clarify any doubt which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witnesses who have already been examined.

7. In the present case, the documents were accepted by the Court below after closing the evidence of witnesses and the said order was not challenged even on the application filed under Order 18 rule 17 of the CPC. The petitioners/plaintiffs have raised only one objection that the defendant No.1 has adopted lingering tactics for which the Court below has imposed the cost. So, for the aforesaid reasons, this Court does not find any substance in the writ petition and affirmed the impugned order.
8. Accordingly, the petition is dismissed. However, the trial Court is directed to decide the *lis* as early as possible, preferably within 6 months from the date of receipt of copy of this order.

Sd/-
(Deepak Kumar Tiwari)
Judge