



IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT  
BILASPUR.

Writ Petition U/A 227 No. 178 of 2012

PETITIONER : Madhu Bai Jaiswal aged 61 years daughter of  
DEFENDANT Bhikhu singh & widow of Baboolal resident of

R. No. 178/12  
Presented by Shri J. K. Gupta  
Dated 19.03.12  
village & Post Sakti ward No.13 Tahsil Sakti  
District Janjgir-Champa C.G.

Versus

RESPONDENT : Set Ram Sahu aged 60 years son of Runawa  
PLAINTIFF resident of village & Post Sakti ward No.13 Tahsil  
Sakti District Janjgir-Champa C.G.

WRIT PETITION UNDER ARTICAL 227 OF THE CONSTITUTION  
OF INDIA.



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**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**S.B.: HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE**

**Writ Petition (227) No.178/2012**

**PETITIONER**

Madhu Bai Jaiswal

***Versus***

**RESPONDENT**

Set Ram Sahu

**WRIT PETITION UNDER ARTICLE 227 OF THE  
CONSTITUTION OF INDIA**

**Appearance :**

Mr. H.B. Agarwal, Senior Advocate with Mrs. Meera Jaiswal, Counsel for the petitioner.

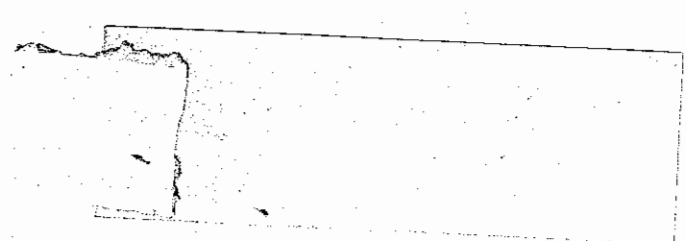
**ORAL ORDER  
(30.11.2012)**

Heard.

(2) This is a writ petition filed by the defendant under Article 227 of the Constitution of India questioning the legality, validity and propriety of the order dated 15.02.2012 passed by the Civil Judge Class-II, Sakti in Civil Suit No.65-A/2011.

(3) By the impugned order, the learned trial Judge called upon the defendant to file affidavit under Order 18 Rule 1 of CPC, first because, in his opinion, the defendant has filed counter claim against the plaintiff in relation to the subject matter of the suit and hence, burden lies on him to file the affidavit first as compared to the plaintiff.

(4) It is not in dispute that the case was fixed for plaintiff's evidence on 30.01.2012, but the plaintiff did not





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adduce any evidence on the said date. The case was accordingly adjourned for plaintiff's evidence on 30.01.2012. Again, on 30.01.2012, the plaintiff did not adduce any evidence and sought time. The case was accordingly adjourned to 15.02.2012. It is on this date, again the plaintiff did not adduce any evidence, but instead the Court directed the defendant to adduce evidence by taking recourse to the provisions contained in Order 18 Rule 1 r/w Order 18 Rule 4 of CPC.

(5) In my view, the initial burden to prove the case is always on the plaintiff and therefore, the trial Court should have ensured compliance of its orders dated 18.01.2012 and 30.01.2012 by directing the plaintiff to first lead evidence and then should have called upon the defendant to prove his case, which he has set up in the written statement/counter claim. There was no legal impediment if the trial Court had followed this procedure.

(6) Accordingly and in the light of the foregoing discussion, the writ petition is allowed in part. The trial Court shall ensure observance of the directions given by this Court by calling upon the plaintiff to adduce evidence first and then, the defendant will adduce evidence on the case set up in the written statement/counter claim.

(7) No cost.

Sd/-

(Abhay Manohar Sapre)  
JUDGE

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