

HIGH COURT OF MADHYA PRADESH,
BENCH AT INDORE
MP NO.3536/2019

*(Devendra s/o Kedarsingh Raghuvanshi & others vs. Bherusingh
s/o Ghishalalji Raghuvanshi & others)*

31.10.2019 (INDORE):

Shri Yogesh Mittal, learned counsel for the petitioners.

Shri Nitin Phadke, learned counsel for the respondents.

Heard.

Petitioners/plaintiffs have filed the present petition being aggrieved by the order dated 26.06.2019 whereby the right to lead evidence has been closed by the trial Court.

Petitioners being plaintiffs filed a suit for declaration, permanent injunction and compensation under Order 7 Rule 1 of the CPC. The defendants appeared and filed written statement. Thereafter on 24.11.2017 the Court framed 7 issues for adjudication but later on vide order dated 15.05.2018 the issue No.2 has been deleted. On 14.12.2017 the Court fixed the case for plaintiffs' evidence but the case was adjourned on 21.12.2017, 02.01.2018 & 12.01.2018. Thereafter on 18.01.2018 last opportunity was granted to lead evidence. On 13.01.2018 a cost of Rs.1,000/- was imposed. Thereafter on three subsequent occasions the plaintiffs have failed to keep the witnesses present in the Court, therefore, the Court had no option but to close the right of plaintiffs' evidence and fixed the case for defendants' evidence, hence the present petition.

Shri Mittal, learned counsel for the petitioners submits that the plaintiffs have already filed three affidavits under Order 18 Rule 4 CPC on 06.07.2018. Thereafter, the defendants took time

to cross examine the witnesses but on 3 occasions the case was adjourned, therefore, there was no deliberate attempt on the part of the plaintiffs to delay the trial. If the plaintiffs are not given opportunity to lead evidence which would cause lot of prejudice to them.

Shri Nitin Phadke, learned counsel appearing for the respondents opposes the plaintiffs' contention by submitting that the plaintiffs are delaying the trial and unnecessarily harassing the defendants, hence the petitioner be dismissed with cost.

The fact remains that the Court framed issues on 24.11.2017 but one of the issue in respect of permanent injunction was deleted on 15.05.2018 and thereafter the plaintiffs filed affidavits on 06.07.2018, therefore, the opportunity was given to the plaintiffs to keep the witnesses present in Court. Thereafter only on 20.08.2018, 31.08.2018 and 10.09.2018 three opportunities have been given to the petitioner within a period of 15 days. The defendants have not started evidence yet.

Since the affidavit of plaintiffs' witnesses are already on record, therefore, a last opportunity is granted to the petitioners to keep their three witnesses present in the Court for cross examination subject to payment of cost of Rs.3,000/-.

In the result, the petition is allowed and the impugned order dated 26.06.2019 is hereby quashed.

(VIVEK RUSIA)

JUDGE

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