

**(2018) 08 CHH CK 0087**

**Chhattisgarh High Court**

**Case No:** Writ Petition 227 No. 669 Of 2018

Madan

APPELLANT

Vs

Dashrath And Ors

RESPONDENT

**Date of Decision:** Aug. 3, 2018

**Acts Referred:**

- Code Of Civil Procedure 1908 - Order 6 Rule 17, Order 8 Rule 1, Order 8 Rule 1A

**Hon'ble Judges:** Goutam Bhaduri, J

**Bench:** Single Bench

**Advocate:** Shobhit Koshta

**Final Decision:** Allowed

### **Judgement**

Goutam Bhaduri, J

1. Heard.

2. The present petition is against the rejection of an application filed under Order 6 Rule 17 CPC by order dated 17.07.2018 passed by the 2 nd Civil

Judge, Class-I, Baster at Jagdalpur.

3. It is contended that the plaintiff is the petitioner who had filed a suit against the defendants for dispossession and in such case after filing of the

written-statement, the defendant/respondents filed an application under Order 8 Rule 1 CPC wherein judgment and decree of the Court were filed.

The learned Court below had allowed the same thereafter fixed the case for evidence. Thereafter before that an application was filed under Order 6

Rule 17 CPC, wherein specifically it was pleaded that the judgment and decree which has been taken on record, the plaintiff/petitioner was not a party

to that therefore, the said judgment and decree is not binding on him. The learned Court below has rejected the same. Learned counsel for the petition submits that the said amendment was necessary in the facts of this case as such he should have been allowed to put forth the actual defense of the plaintiff/petitioner.

4. Heard learned counsel for the petitioner and perused the documents filed with this petition. Perusal of the order-sheet and the document would show that after filing of the written-statement by the respondent an application under Order 8 Rule 1 A CPC was allowed, whereby certain judgment and decree of the Court was taken on record. While admitting those documents, the Court observed that the defendant shall get a right to defend the document, therefore, at cost of Rs.300/-, the same was allowed. Subsequent to that an application under Order 6 Rule 17 CPC was filed, para 3

thereof reads as under:-

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27/2001 24.01.2003, 0 , - 02

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5. Perusal of the proposed amendment *prima facie* shows that the plaintiff/petitioner made a pleading that the decree and the judgment in the earlier civil suit No.27A/01 and subsequent appeal thereof is not binding on the plaintiff/petitioner as he was not a party. Taking into the nature of proposed amendment when the document of the defendant was admitted, the defense which is being raised by way of pleading would be necessary as

otherwise the pleading of the plaintiff in respect of those documents filed by the defendant, which was allowed, would stand unrebutted. Under the circumstances, considering the nature of the amendment, it appears that once the document has been admitted, the petitioner shall also get a fair

opportunity to defend the same and denial of pleading would be first step towards it and it would be necessary to determine the actual question of dispute in between the parties and the proposed amendment would be necessitated to decide the case. In a result, the order dated 17.07.2018 is set aside. The petitioner/plaintiff is allowed to make amendment subject to payment of cost of Rs.1000/- payable to the defendant.

6. Accordingly, the petition is allowed.