

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			WPMS No2771 of 2023 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. B.D. Pande, learned counsel for the petitioner. The petitioner is aggrieved against the impugned order dated 11.09.2023, as it has been passed by the Presiding Officer, Industrial Tribunal and Labour Court, Haldwani, District Nainital in ECA Case No.28 of 2016, "Smt. Jaya Singh and Others Vs. Maxcam Pharmaceuticals". The application for amendment, which pertained to the sustainability of the proceedings before the Employees' Compensation Commissioner has been raised at the belated stage on 12.10.2022, has been rejected. Apart from the fact, that the amendment, which was sought, pertaining to the maintainability, it ought to have been raised at the first available opportunity and it could not have been raised at the belated stage, owing to the principle laid down in paragraph no.4 of the judgment of the Hon'ble Apex Court in the matter of Bahrein Petroleum Co. Ltd. Vs. P.J. Pappu and Another, as reported in AIR 1966 SC 634, coupled with the fact, that on account of the provisions contained under Section 26 of the

		Employees Compensation Act, provisions of the CPC has been partially made applicable over the proceedings of the Employees' Compensation Act and Order 6 Rule 17 of the CPC has not been attracted to be applied. Paragaraph no.4 of the aforesaid judgment is extracted hereunder:- <i>“(4) Counsel for the plaintiff further submitted that, as a matter of fact, the defendants by their conduct have waived the objection. Though this submission found favour with the High Court, we are unable to accept it. If the defendant allows the trial Court to proceed to judgment without raising the objection as to the place of suing and takes the chance of a verdict in his favour, he clearly waives the objection, and will not be subsequently permitted to raise it. It is even possible to say that long and continued participation by the defendant in the proceedings without any protest may, in an appropriate case, amount to a waiver of the objection. But, in this case, we find no conduct of the defendants which amounts to waiver, or which precludes them from raising the objection.”</i> Thus, the amendment sought, at the belated stage and that too, when it is not permissible under the Act, would not be maintainable. Hence, the rejection of the amendment application cannot be said to be faulted of in any manner whatsoever but the grievance of the petitioners is with regards to the observations made by the Workman Compensation Commissioner with regards to the breakage of salary to bring an employee within the ambit of the Act.
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			The order of rejection of the amendment application of 11.09.2023 is hereby affirmed. The proceedings of the ECA Case No.28 of 2016 would itself be decided exclusively on its own merits without being affected by any of the observations made in the order dated 11.09.2023. (Sharad Kumar Sharma, J.) 03.10.2023 Sukhbant
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