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HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 192 of 2015

1. Subhash Chandra Jain S/o Late Munnalal Jain, aged about 57 years, Occupation- Business, R/o Chaudhary & Sons, Shiv Talkies Chowk, Tikrapara Bilaspur, Police Station City Kotwali, Tahsil & District Bilaspur (C.G.), Civil & Revenue District Bilaspur (C.G.)

---- Petitioner

Versus

1. Smt. Sunita Bajaj W/o Rajesh Bajaj, aged about 53 years, Occupation- House Wife, R/o Juni Line, Near Santosh Bhojnalay Bilaspur, Police Station Civil Lines, Tahsil & District Bilaspur (C.G.), Civil & Revenue District Bilaspur (C.G.)
2. State of Chhattisgarh Through Collector, Bilaspur, Police Station Civil Lines, Tahsil & District Bilaspur (C.G.), Civil & Revenue District Bilaspur (C.G.)

---- Respondents

For Petitioner – Shri Ratnesh Kumar Agrawal, Advocate.

For Respondent No.1 – Shri Parag Kotecha, Advocate.

For Respondent No.2 – Shri Sumit Jhanwar, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

02/11/2015

1. Heard.
2. The matter is admitted for consideration.
3. With the consent of both the parties, heard the matter finally.
4. By this petition under Article 227 of the Constitution of India the petitioner has challenged the legality and propriety of the order dated 10-02-2015 passed by the VIth Civil Judge Class-II, Bilaspur, C.G. in Civil Suit No.212A/14 (Subhash Chandra Jain Vs. Smt. Sunita Bajaj and another) whereby and whereunder the Court below has rejected the interim application I.A. No.2/15 under Order 6 Rule 17 of the CPC filed by the plaintiff/petitioner.
5. Brief facts, necessary for disposal of the instant WP(227) are that as the above mentioned Civil Suit is pending before the Court below, the plaintiff/petitioner had filed an application I.A.No.2/15 under Order 6 Rule 17 of

the CPC for amending the pleadings of the plaint at para 3, 6, 11 and 15A. As per facts pleaded in the interim application, on 23rd January 2015 when the plaintiff went to see the suit land then only he came to know regarding possession by defendant No.1 for 550 sq. feet. The plaintiff/petitioner along with the other relevant follow up proposed amendments prayed before the Court below to allow the proposed amendments. The defendant No.1 vide written objection/response before the Court below opposed the interim application filed to amend the plaint. The Court below vide order dated 10-02-2015 after detailed appreciation dismissed the application for amendment in the plaint. Against the impugned order, the plaintiff has filed the instant WP(227) and prayed that the impugned order may be set aside and appropriate relief be granted to him.

6. The respondent No.1 and respondent No.2 both have filed written response/objection and opposed the petition separately and submitted that as the petitioner has pointed out no illegality or perversity in the order passed by the trial Court, nor he pointed out any substantial grounds to challenge the order, it cannot be said that the order is perverse and requires interference by the authority under Section 227 of the Constitution of India by this Court. The matter is long pending and the petitioner/plaintiff is adopting delay tactics by not producing there witnesses for examination and just to harass the respondent proceeding before the trial Court is going on. The petitioner may not be permitted to fill up any lacuna in the plaint. The trial Court has rightly rejected the said application and the same requires no interference. Hence, both the respondents opposed the petition and submitted that the instant WP(227) be dismissed as no illegality or impropriety are demonstrated by the petitioner.

7. Heard both the parties.

8. On behalf of the petitioner it is submitted that on the facts developed on a given date the plaintiff filed the application to amend the plaint suitably so as

to incorporate those facts in his pleadings. The respondents are under the authority to amend their written statement as well and both the parties may be given adequate opportunity to adduce evidence for the pleadings, hence, it cannot be held that any prejudice may be caused to the respondents and as he had given a specific date and fact regarding further act which was not committed at the time of filing of the plaint, hence, the same may be allowed and other consequential relief may also be granted to the petitioner.

9. On the other hand, learned counsel for respondents 1 and 2 duly supported their written response/objection and submitted that there is no any illegality or impropriety in the impugned order which requires any interference, hence, the petition may be dismissed on the grounds taken in their written response/objection.

10. In order to appreciate the arguments advanced on behalf of the parties, I have perused the petition, their reply/response and other material available in the record.

11. On due consideration, it goes to show that the plaintiff/petitioner had filed the application to amend the plaint on the basis of some facts emerged and he gave a specific date for the same, by filing I.A.No.2/15 he prayed to amend the plaint accordingly along with other relevant connected facts necessary for disposal of the dispute.

12. As submitted, the instant civil suit is pending before the trial Court since 02-09-2011 and the matter was fixed for plaintiff's evidence since 2013. Though for appreciation of the prayer to amend the plaint, the Court is not required to appreciate the entire pleadings by hearing the arguments only, since the pleadings require evidence oral as well as documentary in support of the pleadings and in rebuttal the defence are required to adduce evidence against such pleadings, if any. From perusal of the entire order sheet, it goes to show that the proposed amendments are disposed of finally only on the basis of application and its reply. If the plaintiff mentioned a particular date and

facts, it cannot be held at the face of the material only that it is not so unless it is held that the same are not acceptable under any facts or law. Even otherwise, the respondents may get opportunity to amend their written statement on the basis of amended pleadings of the plaintiff and the plaintiff is required to prove his pleadings by adducing oral and documentary evidence and the defence are also having opportunity for adducing evidence in rebuttal. Also as per proviso of Order 6 Rule 17 of the CPC, prima facie, it cannot be held that despite of due diligence, the plaintiff could have raised the matter before commencement of the trial as the plaintiff gave a specific date for the fact.

13. On due consideration, in view of this Court, the order of the Court below is not sustainable in the eyes of law. The same requires interference and the prayer made by the plaintiff/petitioner for amending the plaint is liable to be accepted.

14. On due consideration, the order passed by the trial Court vide order dated 10-02-2015 so far as it relates to appreciation on Order 6 Rule 17 of the CPC is hereby set aside. The prayer for amendment in the plaint by the plaintiff is hereby accepted. The Court below is directed to allow the plaintiff to amend the plaint as prayed in the I.A.No.02/15. The trial Court is further directed to give opportunity to the respondents for amendment in their pleadings in the written statement in response and thereafter the trial Court is further directed to proceed with the trial as per provisions of law and disposed of the same as expeditiously as possible.

15. The petition allowed.

16. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
Judge