

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 513 of 2014**

- Nemichand Jain S/o Late Shri Balchand Jain Aged About 89 years
Occupation : Business, R/o Khaparganj, Marwari Line, Bilaspur, Tahsil Civil & District Bilaspur, (C.G.)

---- Petitioner**Versus**

1. Amit Jain, S/o Late Shri Sheetal Chand Jain, Aged About 36 Years,
Occupation : Business R/o 1881 Ramdas Mandi, Mathura (Uttar Pradesh) Present R/o 3/110, Radhapuram Estate, National Highway No.2, Mathura (Uttar Pradesh)
2. Rosewood Suppliers Private Limited Director Manjeet Singh Gumber
S/o Shri Govind Singh Gumber R/o Dayalband Bilaspur, Tahsil & District Bilaspur (C.G.)
3. Vrishabh Jain S/o Nemichand Jain Aged About 45 Years, R/o Kamla Vihar Colony, Masaniroad Mathura, Tahsil & District Mathura, (U.P.)
4. State of Chhattisgarh Through Collector, Bilaspur, Tahsil & District Bilaspur, (C.G.)

---- Respondents**And****WP227 No. 475 Of 2014**

- Amit Jain, S/o Late Shri Sheetal Chand Jain, aged About 40 years,
Occupation Business, R/o 1881, Ram Das Mandi, Mathura (UP). Presently R/o 3/110, Radhapuram Estate, P.S. National High Way No. 2, Mathura (UP)

---- Petitioner**Vs**

1. Nemi Chand Jain, S/o Late Shri Balchand Jain, aged about 90 years,
Occupation Business, R/o Kaparganj, Marwadi Line, Bilaspur, Tahsil & District Bilaspur (C.G.)
2. Rosewood Suppliers Pvt. Ltd., through its Director, Manjeet Singh Gumber, S/o Govind Singh Gumber, R/o Dayalband, Bilaspur, Tahsil & District Bilaspur (C.G.)
3. Rishab Jain, S/o Shri Nemi Chand Jain, aged about 48 Years, R/o Kamla Vihar Colony, Masani Road, Mathura (UP)

4. State of Chhattisgarh, through the Collector, Bilaspur, Dist. Bilaspur (C.G.)

---- Respondents

For respective Petitioners: Shri Rajeev Shrivastava and Shri Rajeev Bharat, Adv.
For Respondent No.1 : Shri Rajeev Shrivastava, Advocate in WP(227) No.513/14.
For Respondent No.1 : Shri Rajeev Bharat, Advocate in WP(227) No.475/14.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board By

13/03/2015

Heard learned counsel for the parties.

1. In WP (227) 513/2014, the defendant is aggrieved by rejection of his prayer for amendment, whereas in WP (227) 475/2014, the plaintiff is aggrieved by rejection of his application under Order 6 Rule 17 CPC.
2. Defendant's prayer for amendment has been rejected on the ground that in the original pleadings he admitted execution of the sale agreement, whereas in the proposed amendment he has withdrawn the said admission.
3. Having seen the written statement and the proposed amendment, it would appear that the defendant is now explaining the circumstances in which the agreement came into existence. It is not a case of withdrawal of admission. The trial Court misread the nature of amendment sought by the defendant. Since the impugned order records posting of the case for hearing on application for grant of temporary injunction, it would appear that on the said date, the trial had not commenced, therefore, proviso to Rule 17 of Order 6 CPC is not attracted.
4. In the considered opinion of this Court, the trial Court should have granted

the application. Accordingly, WP (227) 513/2014 is allowed. Petitioner's amendment application is allowed.

5. WP (227) No.475/2014 arises out of rejection of the plaintiff's application under Order 6 Rule 17 read with Order 1 Rule 10 & Order 22 Rule 10 CPC.
6. I.A. No.2 dated 24-2-2015 for taking subsequent event on record is considered and allowed.
7. The trial Court has observed that impleadment of parties has already been allowed on previous date of hearing, therefore, the said part of relief has been rendered infructuous. For the remaining prayer under Order 6 Rule 17 & Order 22 Rule 10 CPC, the trial Court found that a joint prayer is not maintainable, therefore, the application has been rejected.
8. Having considered the rival submissions and for the fact that the impugned order itself indicates that the suit is posted only for hearing on temporary injunction and the trial has not yet begun, the prayer for amendment is allowed because the amendment sought for is not of such nature, which has the effect of withdrawal of any admission made earlier nor the said amendment is barred by any statute. Since proviso to Order 6 Rule 17 is not attracted, the trial Court should have granted the application.
9. Accordingly, the writ petition under Article 227 of the Constitution of India is allowed in part. Petitioner's prayer under Order 6 Rule 17 is allowed, however, for the relief claimed under Order 22 Rule 10 CPC, the petitioner would be at liberty to move afresh before the trial Court.

J U D G E

ashu