

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 876 of 2014

1. Arshad Abbas S/o Mr. Abdul Hasan Aged About 51 years R/o Behind Sagar Hotel New Dipak Nagar Durg, Tah & Distt. Durg. C.G.

2. Sazid Hasan S/o Mr. Akbar Ali Aged About 48 Years Kamdar Medical Store Sindhi Colony Station Road, Durg. Tahsil & Distt. Durg. C.G.

---- Petitioners

Versus

Shri Vivek Kumar Agrawal S/o Late Shri Laxmi Narayan Agrawal Aged About 49 Years R/o Flat No. 203 Phase II Rishabh Nagar Durg-491 001 Tahsil & Distt Durg C.G.

---- Respondent

For Petitioner	:	Shri V.G.Tamaskar, Advocate
For Respondent	:	Shri Avinash Chand Sahu, Advocate

Order On Board

13/07/2015

With the consent of the parties, the matter is heard finally.

This petition, under Article 227 of the Constitution of India, is preferred against order dated 10/09/14 by which petitioner / defendant's application for amendment has been rejected.

2. Relying upon the judgment of the Supreme Court in the case of **Usha Balashaheb Swami & Ors. Vs. Kiran Appaso Swami and Ors., AIR 2007 S.C.1663**, learned counsel for the petitioner argued that the Court below has not applied its mind in accordance with the principles of law while rejecting amendment application. Otherwise also, the defendant has throughout maintained in the statement that he has not made any default in payment of rent. He submits that as the evidence has not begun, the Court below ought to have allowed the amendment application which is permissible under the law.

3. Learned counsel for the respondent, on the other hand, submits that

the tenant is adopting delay tactics and after settlement of issues when the evidence was to begin, amendment application has been filed, which is superfluous and contrary to and inconsistent with the stand taken by the respondent.

4. After going through the contents of the written statement of the petitioner and the amendment proposed, it cannot be said, that it is inconsistent with the stand taken by the respondent. Otherwise also, in view of the judgment of the Supreme Court in the case of **Usha Balashaheb Swami (supra)**, inconsistency in the pleadings in the written statement is permissible. In the present petition, though written statement was filed, evidence has not begun. In these circumstances, the application for amendment ought to be allowed. The impugned is set aside. The amendment sought by the petitioner is allowed.

5. Considering that present is a case filed in the year 2012, the Trial Court is directed to decide the suit as early as possible, preferably within a period of six months from the date of receipt of copy of this order. The petition is accordingly finally disposed off.

Sd/-

Manindra Mohan Shrivastava
Judge