

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4247 of 2016

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Sheikh Israil & Ors

.... Petitioner/s

Versus

Khairun Nisha & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nafisuzzoha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 10-03-2016

Heard the learned senior counsel, Mr. Raghiv Ahsan for the petitioners.

By the impugned order dated 04.02.2016, the lower appellate court has rejected the amendment application filed by the defendants-appellants-petitioners for amendment of the written statement filed in the suit which was of the year 2005.

Perused the order passed by the Court below. Admitted fact is that, by the amendment, new facts are being tried to be introduced. Since the suit itself is of the year 2005, the proviso to Order VI Rule 17 C.P.C. will come into play.

The Hon'ble Supreme Court in the case of **Rajkumar Gurawara vs. S.K.Sarawagi and company private limited and another, (2008) 14 Supreme Court Cases 364** has held that in the case of amendments after the commencement of trial, particularly, after completion of the evidences, the question of



prejudice to the opposite party may arise and in such an event, it is incumbent on the part of the court to satisfy the conditions prescribed in the proviso to Order 6 Rule 17 C.P.C. If the party to the proceedings are able to satisfy the court that in spite of due diligence they could not raise the issue before the commencement of trial and the court is satisfied with their explanation, amendment can be allowed even after commencement of trial and not otherwise.

Admittedly, in the present case, it is not the case of the petitioners that the fact now they are trying to introduce by way of amendment was not within their knowledge, therefore, the Court below has rightly rejected the application. In such circumstances, no case for interference in supervisory jurisdiction is made out.

Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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