

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8958 of 2014

Uma Shankar Singh son of late Ram Lakhan Singh resident of village - Sahpur,
Chintamani, P.S. Hathauri, District – Samastipur Petitioner.

Versus

Sitaram Mandar @ Sitaram Mandal son of Batahu Mandar resident of village -
Sahpur, Chintamani, P.S. Hathauri, District - Samastipur Respondent.

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Mishra, Adv.

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 28-04-2016

V.Nath, J.

Heard Mr. Ashok Kumar Mishra, learned counsel

for the petitioner and Mr. Bhuneshwar Prasad, learned counsel for the
defendant-respondent.

Calling in question the legal acceptability of the
impugned order by which the learned court below has allowed the
amendment as prayed by the defendant in the written statement, the
present application under Article 227 of the Constitution of India has
been filed.

The facts are not in dispute that the defendant filed
written statement in the suit and on that basis the issues were framed
and the plaintiff-petitioner accordingly led his evidence. After closure
of the evidence of the plaintiff, the defendant filed the petition praying
for amendment in the written statement on the ground that he was
misled by one Tej Narayan Mandal who according to the defendant
was a relative of the plaintiff and therefore the written statement was

filed making averments which were not as per the instruction of the defendant. The rejoinder to the said petition was filed by the plaintiff.

The learned court below after considering the submissions and the facts mentioned in the amendment petition as well as in the rejoinder, has allowed the prayer for amendment in the written statement by the impugned order after imposing cost upon the defendant.

Mr. Mishra, learned counsel for the petitioner has submitted that the amendment has been sought at a belated stage when the evidence on behalf of the plaintiff was closed. It has also been canvassed that the learned court below has not assigned reasons for allowing the prayer for amendment as made by the defendant. Elaborating his submissions, learned counsel has placed before this Court the contents of the amendment petition in order to drive home the point that the proposed amendment would change the entire colour of the defence including resiling from the admissions earlier made.

Mr. Prasad, learned counsel for the defendant-respondent, in his turn, has submitted that the entire facts and circumstances has been considered by the learned court below in the prayer for amendment after imposing cost. It has, however, been also submitted that the cost as imposed by the learned court below has not been paid to the plaintiff but deposited in the Nazarat. The learned counsel, however, could not explain as to how when the direction was

to pay the cost to the plaintiff, the said direction was not complied and instead the cost was deposited in the Nazarat.

After considering the materials on record and submissions on behalf of the parties, it is manifest that the amendment containing alteration in several paragraphs of the written statement has been prayed by the defendant after the closure of the evidence of the plaintiff. The fact, however, is also admitted that the evidence on the part of the defendant has not yet started. It is well settled by now that the cardinal test for considering the prayer for amendment is the 'real controversy test' as laid down by the apex court in ***Rajesh Kumar Aggarwal Vs. K.K.Modi, (2006)4 SCC 385***. The said view has been further reiterated by the apex court in the recent judgment in the case of ***Ram Niranjana Kajaria Vs. Sheo Prakash Kajaria, 2015 SCALE 98*** where the apex court has again considered the ambit and scope of Order 6 Rule 17 C.P.C. in the context of the prayer for amendment in written statement and has laid down that the delay in itself is not crucial for refusing the prayer for amendment in the written statement.

In view of the dictum laid down by the apex court as above, this Court comes to the conclusion that the learned court below has the jurisdiction to allow the prayer for amendment in the suit as made by the defendant. But this leads to another limb of argument on behalf of the petitioner that no specific reason has been



assigned in the impugned order before allowing the said prayer. This Court, however, has considered the nature of the proposed amendment and the grounds for seeking the amendment in the light of the rival submissions made by the parties and is satisfied that in the facts and circumstances, the amendment could have been allowed to do complete justice in the matter. The fact, however, cannot be ignored that the amendment has been made at a late stage when the plaintiff's evidence has been closed and in that circumstance, the learned court below ought to have granted the opportunity to the plaintiff to lead further evidence in view of the amendment, and also to make appropriate amendment in pleading, if so desired. Another fact is also evident that the defendant has not paid the amount of cost to the plaintiff as directed by the court below and instead has deposited the same in the Nazarat which action is not in accordance with the direction of the court.

In result, this application is disposed off with modification in the impugned order only to the extent that the order allowing the prayer for amendment in the written statement as prayed shall be subject to the cost of Rs. 5,000/- to be paid to the plaintiff by the defendant and the plaintiff shall be entitled to lead further evidence in view of the amendment in the written statement and shall also be entitled to make consequential amendment in the plaint. The amount of above cost must be paid within a period of four weeks from

the date of receipt/ production of a copy of this order, in the manner as may be directed by the learned court below. However the amount of cost as imposed by the impugned order which, according to the learned counsel for the defendant-respondent, has been deposited in the Nazarat, is directed to be paid to the plaintiff-petitioner and shall be adjusted in the total amount of cost as imposed upon the defendant-petitioner by this order.

This writ application is, accordingly, disposed of with direction.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NS
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