

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13205 of 2014

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Mehta, Vishwanath Son of Late Dhorha Mehta resident of Mohalla Bahari
Dhawalpura, Patnacity, P.S. Chowk, Distt.- Patna.

.... Petitioner/s

Versus

Smt. Chanchala Devi Wife of Shri Raj Narayan Singh resident of present
Sandalpur, P.S. Bahadurpur, P.O. Mahendru, Distt. Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 13199 of 2014

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Mehta Vishwanath Son of Late Dhorha Mehta resident of Mohalla Bahari
Dhawalpura, Patnacity, P.S. Chowk, Distt.- Patna.

.... Petitioner/s

Versus

Smt. Chanchala Devi Wife of Shri Raj Narayan Singh resident of Present
Sandalpur, P.S.- Bahadurpur, P.O- Mahendru, Distt- Patna.

.... Respondent/s

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Appearance :

(In CWJC No. 13205 of 2014)

For the Petitioner/s : Mr. Rajendra Narayan, Sr. Adv.
Mrs. Meena, Adv.

For the Respondent/s : Mr. Ramesh Kumar Verma, Adv.

(In CWJC No. 13199 of 2014)

For the Petitioner/s : Mr. Rajendra Narayan, Sr. Adv.
Mrs. Rajiv Ranjan, Adv.

For the Respondent/s : Mr. Ramesh Kumar Verma, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 26-09-2016

Heard Mr. Rajendra Narayan, learned senior counsel for
the petitioner as well as learned counsel for the respondent.

The present two applications have been filed assailing
the common order by which the learned court below has turned down

the prayer for amendment in the written statement and prayer for filing additional written statement as made by the defendant.

The suit has been filed for specific performance of contract in the year 1999. The plaintiff's prayer for amendment in the plaint was allowed on 10.02.2010. The suit proceeded and reached to the stage of final argument. At that stage, the defendant filed two petitions on 24.05.2014 praying for amendment in the written statement and seeking permission to file additional written statement respectively. By the impugned order, the learned court below has rejected the said two petitions.

Mr. Narayan, learned senior counsel for the petitioner has submitted that the amendment are only formal in nature and by way of additional written statement also no new facts are introduced. It has therefore been submitted that the defendant be given liberty to make amendment in the written statement and to file additional written statement after fixing time for disposal of the suit at the earliest.

Learned counsel for the respondent, however, has supported the impugned order and has submitted that the learned court below has assigned valid reasons for rejecting the prayer as made by the defendant. It has been contended that the suit has been filed in the year 1999 and the final argument in the suit has also been done. It has

been submitted that the defendant has not assigned cogent reasons or established due diligence in not preferring the amendment or not filing the additional written statement at the earlier stage of the suit.

After considering the submissions and perusal of the impugned order as well as the materials on record, it is evident that the suit is at the final stage and the fact has also been noticed in the impugned order itself that the part argument on behalf of the defendant has been done. It also transpires that the amendment in the plaint was prayed by the plaintiff and was allowed by order dated 10.02.2010. It is manifest that the defendant therefore did not promptly pray for amendment in the plaint or sought permission to file additional written statement which he had chosen to do only on 24.05.2014 when the argument in the suit was in progress. The petition filed by the defendant which has been annexed with the present application also does not disclose that there has been cogent explanation or statement establishing due diligence on the part of the defendant. The explanation that a new advocate was engaged and thereafter the necessity for seeking amendment and filing additional written statement was realized cannot be held to be due diligence on the part of the defendant in the facts and circumstances. The learned court below in the impugned order has further also found that the facts sought to be incorporated by amendment as well as by way of

additional written statement have already been stated in the written statement dated 05.07.2005. During the course of submission on behalf of the petitioner also it has been stated that the amendments as well as the written statement introduce the facts which are only formal in nature. In this backdrop, this Court is not inclined to interdict the impugned order under Article 227 of the Constitution of India.

The application is, accordingly, dismissed.

However, the petitioner shall be at liberty to raise objection in accordance with law, if such occasion arises, under the provision of Section 105 C.P.C.

(V. Nath, J)

Devendra/-

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