

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10956 of 2014

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Md. Sajjad Alam @ Md. Sajjad & Ors

.... Petitioner/s

Versus

Md. Raziuddin & Anr

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amarnath Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 19-02-2016

Heard the learned counsel, Mr. Amarnath Jha for the petitioners and the learned counsel, Mr. Diwakar Prasad Singh for the respondents.

By the impugned order dated 14.05.2014, the learned Sub Judge IV, Saharsa rejected the amendment application filed by the petitioner in Title Suit No.260 of 2012 only on the ground that by the amendment, the defendant is brining a new fact in the written statement after deleting the pleading made in paragraph 21(gha).

Perused the order passed by the Court below. It is not the case of the plaintiff that in paragraph 21(gha) of the written statement, the defendant had already admitted any case of the plaintiff nor reason has been assigned by the Court below that because of proviso to Order VI Rule 17 C.P.C., the amendment is rejected.



It is settled principles of law that “the courts have very wide discretion in the matter of amendment of pleadings but court’s power must be exercised judiciously and with great care. While deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.” On these grounds also, the learned court below has not rejected the amendment application. It is also settled principles of law that “the first condition which must be satisfied before the amendment can be allowed by the court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the court’s discretion in grant or refusal of the amendment. The other important condition which should govern the discretion of the court is the potentiality of prejudice or injustice which is likely to be caused to the other side. Ordinarily, if the other side is compensated by costs, then there is no injustice.” Reference may be made to the decision of the Supreme Court in the case of **Revajetu Builders and Developers Vs. Narayanaswamy and sons and others, (2009) 10 Supreme Court Cases 84.**

In the present case, it is the submission of the learned

counsel for the petitioner that the evidence of the plaintiff is going to be started. Moreover, the Court below has not recorded any finding as to whether any prejudice will be caused to the other side or not. The Court below has also not recorded any finding that whether the plaintiff's evidence has been closed. The reason assigned by the Court below is that after deleting, a new fact is being tried to be introduced by way of amendment.

In view of the above factual position and the law laid down by the Supreme Court, the Court below has not exercised a jurisdiction vested in it by law.

Thus, this writ application is allowed. The impugned order is set aside. The defendant-petitioner's application for amendment is allowed.

(Mungeshwar Sahoo, J)

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