

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18528 of 2015

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Sachindra Kumar Pandey & Ors

.... Petitioner/s

Versus

Most. Shobha Devi & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anish Chandra Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR

SAHOO

ORAL ORDER

2 27-06-2016

Heard the learned counsel, Mr. Anish Chandra Sinha, for the petitioner and the learned counsel, Mr. Bishwanath Chaudhary, for the respondent No.1 and 3.

By the impugned order dated 07.09.2015, the learned Sub Judge IV, Patna in Title Suit No.513 of 2012 disposed of two applications. One application filed by the plaintiff respondent under Order VI Rule 17 CPC and the other application filed by the petitioner under Order VII Rule 11 Clause (a) and clause (b) CPC praying for rejection of the plaint.

In the case of *Liverpool & London S.P. & I Association Ltd. Vs. M.V.Sea Success I (2004) 9 SCC 512*, the Hon'ble Supreme Court has held that **'the order refusing to reject the plaint falls in the category of a preliminary judgment. Therefore, if it is a preliminary judgment according to the decision of the Supreme Court then certainly, the same can be challenged by the petitioner**

in civil revision under the Code of Civil Procedure.’ Therefore, the petitioner is granted liberty, if so advised, to file civil revision against the said part of the order whereby the petitioner’s application under Order VII Rule 11 CPC has been rejected.

However, I heard the parties on the application, i.e., amendment application filed by the plaintiff respondent which has been allowed by the Court below in the latter part of the impugned order dated 07.09.2015. It is admitted fact that still today issues have not been framed. Therefore, it is pre-trial amendment.

In such view of the matter when trial has not commenced, the Court has the jurisdiction to allow amendments of the pleadings at any stage. There is no question of prejudice to the petitioner arises because only pleading has been allowed to be amended. Thus, I find no reason to interfere with that part of the order whereby the amendment application has been allowed. Accordingly, that part of the order is hereby confirmed. So far other part is concerned, liberty has been granted to the petitioner may file revision before the High Court.

Accordingly, this writ application is dismissed with the aforesaid liberty so far the other part is concerned.

Sanjeev/-

(Mungeshwar Sahoo, J)

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