

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.771 of 2016**

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Md. Jamaluddin

.... Appellant/s

Versus

The Regional Manager, Punjab National Bank & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Md. Ataul Haque

For the Respondent/s : Mr. Kumar Priya Ranjan

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

3 20-10-2016

Heard the learned counsel for the petitioner and the

learned counsel for the respondents.

Perused the impugned order dated 20.06.2016 passed
by Sub Judge V, Ara in Money Suit No.2 of 2009.

It appears that the aforesaid money suit was filed by the
plaintiff-petitioner for realization of Rs.58,503/-. The respondent-
Bank and Bank's authorities filed contesting written statement.
Issues were framed and the plaintiff's evidence started. Thereafter,
application for amendment has been filed by the plaintiff-
petitioner praying for amendment raising the valuation of the suit
to the extent of Rs.1,74,305/- on the ground that some amount
which are payable as over time work done by the plaintiff have
been left to be mentioned. The Court below by this impugned
order has rejected the amendment application on the ground that
as per the plaint, the cause of action arose on 30.01.2009 and by



way of proposed amendment, the plaintiff wants to realize the arrears of dues for the over time work said to be done by him from 1st February, 2009 to 22nd February, 2009 and, therefore, if amendment is allowed, it will change the cause of action as well as create a new case.

From perusal of the impugned order, it appears that the learned Court below has discussed the amendment petition at great length on merit and has held that if it is allowed, it will change the cause of action and it will be entirely a new case. The Court below nowhere decided or recorded any finding as to whether the amendment sought for by the plaintiff is necessary for the just decision of the controversies between the parties or not and likewise the Court below has not recorded any finding to the effect that whether if amendment is allowed, any prejudice will be caused to the defendant-respondent. As has been admitted, the evidence of the plaintiff has only been started and the defendant is yet to adduce evidence.

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 a pre trial amendment can be allowed liberally as the opposite party would not be prejudiced because he will have an opportunity of



meeting the amendment sought to be made. However, in the case of amendments after commencement of the trial, particularly, after completion of the evidence, 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.

Admittedly, in the present case, evidence has only been started. The Hon'ble Supreme Court in the case of **L.C. Hanumanthappa v. H.B.Shivakumar, (2016) 1 Supreme Court Cases 332** has held that "all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties." As stated above, the Court below has not recorded any finding on the question as to whether amendment sought for is necessary for just decision of the controversy between the parties.

It may be mentioned here that if amendment is rejected here then for the amount, which is being claimed by way of amendment, the plaintiff has to institute a separate suit and, therefore, it will be great hardship to the petitioner.

So far the impugned order is concerned, as stated above, the Court below has decided the amendment application on

merit.

The Hon'ble Supreme Court in the case of **Rajesh Kumar Aggarwal and others vs. K.K.Modi and others, (2006) 4 Supreme Court Cases 385** has held that while considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merit of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer in amendment. It appears that in that case, the High Court without deciding whether the amendment in question was necessary has expressed certain opinion and entered into a discussion on merit. The Hon'ble Supreme Court set aside the order of the High Court and held that it can only be decided at the time of final hearing of the suit. This is reiterated again by the Hon'ble Supreme Court in the case of **Lakha Ram Sharma v. Balar Marketing Private Limited, (2008) 17 Supreme Court Cases 671**.

In view of the above settled principles of law, in my opinion, the Court below has refused to exercise a jurisdiction vested in it by law and thereby it occasioned failure of justice.

In the result, this Civil Miscellaneous application is

allowed. The impugned order dated 20.06.2016 passed by Sub Judge V, Ara in Money Suit No.2 of 2009 is hereby set aside. The respondents are at liberty to file additional written statement.

Saurabh/-

(Mungeshwar Sahoo, J)

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