

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1190 of 2016**

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Aas Mohammad & Ors

.... Appellant/s

Versus

Md. Mumtaz Qureshi & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rabindra Nath Tiwari

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**

ORAL ORDER

- 3 08-12-2016 **1.** Heard the learned counsel, Mr. Madhav Rai, for the petitioner.
- 2.** Perused the impugned order dated 18.06.2016 passed by Sub Judge IInd, Katihar in Title Suit No.208 of 2015 whereby the learned Court below allowed the amendment application filed by the plaintiff respondent.
- 3.** The learned counsel for the petitioner submitted that by amendment, the plaintiff is changing the basis of the suit. The learned counsel relied upon the decision of this Court reported in **1998 (3) P.L.J.R. 387** and submitted that the amendment could not have been allowed by the Court below.
- 4.** From perusal of the impugned order, it appears that issues have not yet been settled. The suit is at the very initial stage.
- 5.** The Hon'ble Supreme Court in the case **Revajeetu Builders**



and Developers Vs. Narayanaswamy and Ors (2009) 10 S.C.C. 84 has held that the Courts have very wide discretion in the matter of amendment of pleadings. 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. 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. While deciding application for amendment, the Court must not refuse bona fide, legitimate, honest and necessary amendments. In the present case since the suit is at the very initial stage, there is no question of prejudice to the petitioner arises.

6. So far the decision relied upon by learned counsel for the petitioner is concerned, it appears that in that case prayer for amendment was made in the written statement and by way of amendment the defendant tried to withdraw the admission made in the written statement. Therefore, the decision is not applicable in the present case. Thus, I find no reason to interfere with the impugned order and accordingly, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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