

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4291 of 2016

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Shiv Balak Paswan & Ors

.... Petitioner/s

Versus

Smt. Jayrani Devi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nand Kishore Prasad Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 29-06-2016

Heard learned counsel, N.K. P. Sinha, appearing for
he petitioners.

2. It appears that the trial court has rejected the recall application. The petitioners filed recall application to recall the order, whereby the amendment application was allowed by the court below.

3. The ground of the petitioners is that six witnesses have already been examined by the plaintiff and at this stage, the amendment has been allowed and by amendment, the nature of the suit is being changed.

4. From perusal of the order, it appears that the court below has relied upon various decisions of the Supreme Court. It is well settled principle of law as has been held by the Hon'ble Supreme Court in the case of *Raj Kumar Gurawara Vs. S.K. Sarwagi (2008) 14 SCC 364* 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 case of amendment after the commencement of trial, particularly, after completion of the evidence, the question of prejudice to the opposite party may arise and in such 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.

5. In the present case, admittedly, the evidence of the plaintiff is going on and there is no question of prejudice to the petitioners arises. The petitioners, if so advised, may file additional written statement to the amended portion only. Therefore, the order passed by the court below is based on the various judgments of the High Court as well as the Supreme Court, as such, it cannot be said that the court below has passed irrational order nor it can be said that the order has been passed in the manner not permitted by law nor it can be said that the order is without jurisdiction. Therefore, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Thus, this writ application is dismissed.

brajesh/-

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(Mungeshwar Sahoo, J)