

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.231 of 2016**

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Bishu Jagnani @ Bishwanath Jagnani

.... Appellant/s

Versus

Ram Padarath Singh & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mukesh Kumar

For the Respondent/s : Mr.

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

2 11-08-2016

Heard learned counsel, Mr. V.K. Pandey, appearing
for the petitioner.

2. Perused the order dated 13.04.2016 passed by the
Sub- Judge, 1st, Civil Court, Lakhisarai in T.S. No. 31 of 2008,
whereby, the court below rejected the amendment application filed
by the petitioner for amendment of the written statement.

3. According to the petitioner himself, the evidence of
the plaintiffs has already been closed. In the written statement,
some new fact is being tried to be introduced by way of
amendment. The amendment application has been annexed to this
civil miscellaneous application. The trial court held that there is no
explanation at all regarding proviso to Order 6 Rule 17 C.P.C. and,
accordingly, rejected the amendment application finding that the
petitioner did not show the due diligence.

4. The Hon'ble Supreme Court in the case of *Vidyabai*

& Ors. Vs. Padamalatha & Anr. reported in **AIR 2009 SC 1433**

has held that proviso appended to Order 6 Rule 17 of the Code restricts the power of the Court. It puts embargo on exercise of its jurisdiction. The Court's jurisdiction in a case of this nature is limited. Thus, unless the jurisdictional fact as envisaged therein is found to be existing, the Court will have no jurisdiction at all to allow the amendment of the plaint. It appears that in that case, the trial has commenced and thereafter amendment application was filed by the plaintiff. The said application was rejected by the trial court. The writ application was filed before the High Court. The High Court allowed the application for amendment. The Supreme Court set aside the order of the High Court and held that the trial court order refusing the amendment neither suffered from jurisdictional error nor any error of law. Therefore, interference in writ jurisdiction was improper. In the present case, the only difference is that here amendment of written statement is prayed for as the plaintiff's evidence has already been concluded.

5. The Hon'ble Supreme Court in the case of **Rajkumar Guruwara (dead) through Lrs. Vs. S.K. Sarwagi & Co. Pvt. Ltd.** reported in **2008 (14) 364** has held that in case of amendment after commencement of trial, particularly, after completion of 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. If the parties to the proceedings are able to satisfy the Court that in spite of due diligence, they could not raise the issue before the commencement of trial and the Court is satisfied with their explanation, the amendment can be allowed even after commencement of the trial and not otherwise. In the present case, there is no explanation at all regarding the conditions mentioned in Order 6 Rule 17 C.P.C. the court below has, therefore, rightly rejected the amendment application.

6. In view of the above, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Thus, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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