

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14958 of 2015

=====

Dinesh Singh & Ors

.... Petitioner/s

Versus

The State of Bihar & Anr

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Praveen Prakash

For the Respondent/s : Mr. Ga7-S.P.Singh

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 19-05-2016 Heard the learned senior counsel, Mr. Surendra Singh, for the petitioner and the learned counsel, Mr. Khatim Raja for the respondent.

By the order dated 03.08.2015, the learned Sub Judge Ist, Sherghati, Gaya in Title suit No.359 of 2015 / 72 of 1999 has allowed the amendment application filed by the plaintiff respondent.

Objection of the defendant petitioner is that after amendment of the CPC, Proviso to Order 6 Rule 17 has been introduced whereby it has been provided that after commencement of trial, amendment cannot be allowed by the Court unless the plaintiff proves his due diligence.

Secondly, that earlier amendment application was rejected for non-prosecution, therefore, the plaintiff should have filed application for restoration of the amendment application but

instead of that after long period, another amendment application has been filed and the Court below has allowed this application.

So far first ground is concerned, it may be mentioned here that it is settled principal of law that the Proviso to Order 6 Rule 17 CPC will not apply in a suit which has been filed prior to 1st of July, 2002 on which date, the amendment of the CPC being Act No.22 of 2002 came into force. Reference may be made in this matter to the decision of Hon'ble Supreme Court reported in **(2007) 1 SCC 765 (State Bank of Hyderabad Vs. Town Municipal Council) and (2009) 12 SCC 689 (Sumesh Singh Vs. Phoolan Devi & Ors.)**.

So far second ground is concerned, it is only technical objection. It appears that although the suit is of the year 1999 but still today, the trial has not commenced as only issues have been framed and evidence has not yet started, therefore, there is no question of prejudice to the petitioner arises. Therefore, I find no reason to interfere with the impugned order.

Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

U		T	
---	--	---	--