

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.631 of 2016**

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Madan Mahto @ Madan Prasad Mehta

.... Appellant/s

Versus

Barhan Mahto & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Parmanand Pd. Nr. Sahi

For the Respondent/s : Mr.

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

- 2 20-09-2016 1. Heard the learned counsel for the petitioner.
2. Perused the impugned order dated 18.05.2016 passed by Sub Judge I, Lakhisarai in Title Suit No.74 of 2011 whereby the learned Court below has allowed the amendment application filed by the plaintiff respondent.
3. Although in the Civil Misc. application, nowhere the defendant petitioner alleged that the trial has commenced or that the evidence of the petitioner has already been closed or that the petitioner is in any way prejudice by the impugned order. The learned counsel for the petitioner submitted that the Court below was required to consider Proviso to Order 6 Rule 17 CPC but the Court below without considering the same has allowed the amendment application.
4. From perusal of the impugned order, the Court below

only observed that there is delay in filing the amendment application. As stated above, the petitioner is not giving any statement on oath that trial has already commenced or that the evidence of the defendant has already been closed.

5. The Hon'ble Supreme Court in the case of **(2008) 14 SCC 364 Rajkumar Gurawara Vs. M/S. S.K.Sarwagi** 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 case of amendments, after the commencement of 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 condition prescribed in Proviso to Order 6 Rule 17 CPC.'** In the present case, as stated above, no such statement is made by the petitioner that in fact the evidence of the petitioner has already been concluded and, therefore, he will be prejudiced.

6. The Hon'ble Supreme Court **(2016) 1 SCC 332 L.C. Hanumanthappa Vs H.B.Shivakumar** has held that **'all amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, (b) of**

being necessary for the purpose of determining the real questions in controversy between the parties. Thus, amendment should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs.'

7. In view of the above settled proposition of law, in my opinion, the learned Court below has rightly exercised the jurisdiction vested in it by law under Order 6 Rule 17 CPC.

8. Thus, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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