

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4498 of 2014

Chain Kumar Mahto @ Chayan Kumar Mahto

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Gopal Govind Mishra

For the Respondent/s-State : Mr. S.K. Sarab, A.C. to G.P.-18

For the Respondent : Mr. Aditya Narayan Singh-I

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 13-01-2016 Heard learned counsel for the petitioner as well as
learned counsel for the respondents.

This application, under Article 227 of the Constitution of India, has been filed by the defendant-petitioner against the order dated 17.12.2013 passed by the 2nd Munsif, Ara (Bhojpur) in Title Suit No. 38 of 2011, whereby the court below has allowed the application filed by the plaintiffs-respondents.

The learned counsel for the petitioner relied on the decision of the Supreme Court in the case of *Vidyabai & Ors. Vs. Padmalatha & Anr.* reported in *AIR 2009 SC 1433* and submitted that after commencement of trial, no amendment could have been allowed in view of proviso to Order 6 Rule 17 C.P.C. The learned counsel also relied upon the decision of this Court reported in *2013 (3) PLJR 354* and many other decisions.

On the other hand, learned counsel for the respondents submitted that by mere amendment, no prejudice is caused to the defendant particularly when only issues have been framed.

Perused the order of the court below. It is admitted fact that till today only issues have been framed and the parties are yet to examine witnesses. In such situation, it appears that on the date of passing of the impugned order only, issues were framed and no evidences were adduced by the parties. In this view of the matter, there is no question of prejudice to the petitioner arises. The Hon'ble Supreme Court in the case of ***Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others*** reported in ***2006 (4) SCC 385*** has held that order 6 Rule 17 consists of two parts. Whereas the first part is discretionary and leaves it to the court to order amendment of pleading. The second part is imperative and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties. Admittedly in the present case, since only issues were framed on the date of passing the order, there is no question of any prejudice to the petitioner arises. In the decision relied upon by the petitioner witnesses were examined and there was question of prejudice.

In such circumstances in exercise of supervisory

jurisdiction when the court below has exercised a sound judicial discretion, the impugned order cannot be interfered with in supervisory jurisdiction. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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