

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.717 of 2016

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Urvashi Pathak

.... Appellant/s

Versus

Gauri Shankar Pandey & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ram Nath Singh Yadav

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR

SAHOO

ORAL ORDER

2 27-09-2016

Heard Mr. S.D. Yadav, learned counsel for the
petitioner.

Perused the impugned order dated 28.6.2016, passed
by the learned Sub Judge-3, Bhabua whereby the court below
rejected the amendment application filed by the defendant-
petitioner for amendment of the written statement.

It appears that the plaintiff's evidence has already
been closed. The defendant filed the amendment application
praying for addition of a new paragraph in the written statement.
The amendment application is Annexure-4. It is alleged that the
advocate who had filed the written statement without taking
proper instruction from the petitioner drafted the written statement
and counter claim made in the written statement which was not
read over to the petitioner. In the proposed amendment portion the
new fact has been sought to be introduced by way of amendment.
It is not the case of the defendant that this fact which is now being

sought to be amended was not known to the petitioner. The only case is that the Advocate wrongly not included this disputed facts while filing the written statement.

The court below by the impugned order rejected this amendment application on that ground. At paragraph 11, the defendant has admitted the case of the plaintiff and stated that there was agreement between the defendant and the plaintiff for Rs. 30,000,00/- and plaintiff paid Rs. 2,000,00/- as advance and by the amendment the defendant is now withdrawing the said admission made in paragraph 11 of the written statement.

Admittedly, the evidence of the plaintiff has already been closed. According to the proviso to Order 6 Rule 17 CPC the court can not allow amendment after commencement of trial. **The Hon'ble Supreme Court in the case of Rajkumar Gurawara Vs. S.K. Sarwagi & Company Pvt. Ltd. and another reported in Cases (2008) 14, S.C.C., 364** has held that in a case of amendments after the commencement of trial particularly after completion of the evidence (in the present case evidence of plaintiff has been closed) 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 conditions prescribed in the proviso to Order 6 Rule 17 CPC. If the parties to the proceeding 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, amendment can be allowed even after commencement of trial. In the present case, admittedly, the evidence of the plaintiff has already been closed. There is no explanation of due diligence. It is not the case of the defendant-petitioner that the fact which is sought to be amended was not known to her prior to commencement of the trial.

Further, according to the trial court the defendant-petitioner is trying to withdraw the admission categorically made in paragraph 11 of the written statement. **The Hon'ble Supreme Court in the case of Gautam Sarup Vs. Leela Jetly and Others reported in Supreme Court Cases (2008) 7, page 85** has held that a categorical admission cannot be resiled from but in a given case it may be explained or clarified.

In view of the above, legal and factual position in my opinion, the order passed by the court below is within the jurisdiction conferred on it by law and, therefore, no case for interference in supervisory jurisdiction is made out.

Accordingly, this Civil Miscellaneous Application is dismissed.

siddharth/-

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(Mungeshwar Sahoo, J)