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HIGH COURT OF CHHATTISGARH, BILASPUR**WP (227) No.520 of 2015**

1. Ramnarayan S/o Late Tularam Sahu, Aged About 55 Years R/o Village Dargahan, Tahsil And District Dhamtari (Chhattisgarh)
2. Chintaram Sahu, S/o Late Tularam Sahu, Aged About 53 Years R/o Village Dargahan, Tahsil And District Dhamtari (Chhattisgarh)
3. Shiv Kumar Sahu, S/o Late Tularam Sahu, Aged About 51 Years R/o Village Dargahan, Tahsil And District Dhamtari (Chhattisgarh)
4. Kunti Bai, W/o Late Nammu Sahu, Aged About 48 Years R/o Baiga Para, Dantitola Ward, Dhamtari, Tahsil And District Dhamtari (Chhattisgarh)
5. Vimlabai, W/o Nandkumar Sahu, Aged About 46 Years R/o Village Loharsi, Tahsil And District Dhamtari (Chhattisgarh)

---- Petitioners

Versus

1. Aasharam S/o Mehtaru Sahu, Aged About 58 Years Caste-Agriculturist, R/o Village Dargahan, P.H. No. 5, Rajasv Nirikshik Mandal, Bhothli, Tahsil And District Dhamtari (Chhattisgarh)
2. Udhoram, S/o Mehtaru Sahu, Aged About 48 Years Caste-Agriculturist, R/o Village Dargahan, P.H. No. 5, Rajasv Nirikshik Mandal, Bhothli, Tahsil And District Dhamtari (Chhattisgarh)
3. Khilendra, S/o Late Bhishm, Aged About 24 Years Caste-Agriculturist, R/o Village Dargahan, P.H. No. 5, Rajasv Nirikshik Mandal, Bhothli, Tahsil And District Dhamtari (Chhattisgarh)
4. Geeta, D/o Late Bhishm, Aged About 30 Years Caste-Agriculturist, R/o Village Dargahan, P.H. No. 5, Rajasv Nirikshik Mandal, Bhothli, Tahsil And District Dhamtari (Chhattisgarh)
5. Neelam, D/o Late Bhishm, Aged About 28 Years Caste-Agriculturist, R/o Village Dargahan, P.H. No. 5, Rajasv Nirikshik Mandal, Bhothli, Tahsil And District Dhamtari (Chhattisgarh)
6. Ukhabai, Wd/o Late Bhishm Sahu, Aged About 48 Years Caste-Agriculturist, R/o Village Dargahan, P.H. No. 5, Rajasv Nirikshik Mandal, Bhothli, Tahsil And District Dhamtari (Chhattisgarh)
7. F.R. Sakshi, Presently Working As The Then Tahsildar, Dhamtari, R/o Near Nala Puliya, Sorid Nagar, Dhamtari, Tahsil And District Dhamtari (Chhattisgarh)
8. Additional Tahsildar, Dhamtari, Tahsil Office, Dhamtari, Tahsil And District Dhamtari (Chhattisgarh)
9. Shashi Saarwa, Patwari P.H. No. 5 Rajasv Nirikshik Mandal Bhothli, Tahsil And District Dhamtari (Chhattisgarh)
10. State Of Chhattisgarh, Through: The Collector, Dhamtari, District Dhamtari (Chhattisgarh)

11. Naresh Agarawal, S/o Shri Mahesh Kumar, Aged About 34 Years R/o Maitri Vihar Colony, Dhamtari, Tahsil And District Dhamtari (Chhattisgarh)
12. Vishal, S/o Shri Vishnudayal Agrawal, Aged About 27 Years R/o Maitri Vihar Colony, Dhamtari, Tahsil And District Dhamtari (Chhattisgarh)

---- Respondents

Shri PP Sahu, counsel for the petitioners.
 Shri Vishnu Kosta, counsel for respondents 1 to 6.
 Smt. M. Asha, Panel Lawyer for the State/respondent No.10.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

19.01.2016.

Heard.

2. It is submitted on behalf of the answering respondent present that they do not intend to file written response/objection of the matter and are ready to argue the matter finally at the motion stage itself.

3. On due consideration, the instant petition is heard finally at the motion stage itself.

4. It is submitted on behalf of the petitioner that vide impugned order dated 13.5.2015 in civil suit No.31A/2014 (Asharam & Ors. vs. Ramnaryaan & Ors.) the Court below has dismissed the application for amendment under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short 'the Code') filed by the petitioner/defendants. The Court below while rejecting the application for amendment held that the said amendment application could have been filed earlier and also that as there is no any new pleadings in the matter, prayer for amendment in the written statement was rejected. Learned counsel for the petitioners submits that though the issues were framed and the case was listed for plaintiffs' evidence, till date i.e. filing of the amendment, plaintiffs'

evidence was not started. Case of the plaintiffs is not adversely effected, no prejudice is caused in case the amendment is allowed and when the matter is being prepared for evidence then only clerical error and other facts were noticed. Learned counsel submits that as the plaintiffs' evidence is not yet started they may be permitted to amend their written statement. The provision under Order 6 Rule 17 of the Code is not mandatory rather directive. Learned counsel for the petitioner has placed reliance on **(2007) 6 SCC 167, Andhra Bank Vs. ABN Amro Bank NV & Ors.**, wherein the Hon'ble Apex Court despite delay in filing the application and other facts allowed the amendment application. He further placed reliance on **(2006) 6 SCC 498, Baldev Singh and Others vs. Manohar Singh and Anr.**, wherein also the Hon. Apex Court held that inconsistent defences can be raised in the written statement although the same may not be permissible in case of plaint. The Apex Court further held that even after the delay of three years in filing the application for amending written statement, the said application cannot be rejected without any serious prejudice has been shown to cause the plaintiff so as to take away any accrue right. Further placed reliance on **(2007) 5 SCC 602, Usha Balashaheb Swami and others vs. Kiran Appao Swami and others**, wherein the Hon. Apex Court held that in addition of new ground of defence or substituting or altering a defence or taking inconsistent pleas in written statement can be allowed as long as the amended pleadings do not result in causing grave injustice and irretrievable prejudice to plaintiff or displacing him completely. Learned counsel would further submits that on the basis of principles reiterated by the Apex Court, evidence is yet to be started no prejudice is caused, the Court below be directed to allow the petition by allowing the instant petition.

5. Per contra, learned counsel for the respondents 1 to 6 opposed the petition orally and would submit that as mentioned in the amendment application (Ex-P/4), the prayer is for the amendment of the para 2 of the written statement whereas there is no such pleading in para 2. Hence, as there is no any pleadings in para 2, how the amendment can be allowed. Learned counsel further objected the prayer that by allowing the amendment application pleading in the admission is going to be changed. He further submits that if the proposed amendment as in Annexure-P/4 may be held as amendment for the para 3 of the written statement even then there is no likewise pleadings. On behalf of the respondents reliance placed for **AIR 2013 SC 3693, S. Malla Reddy v. M/s. Future Builders Co-operative Housing Society and ors. and other connecting appeals**, wherein the Hon.ble Apex Court held that the application for amendment so filed was abuse of process of Court more so as it was filed 13 years after the trial is commenced, hence the Supreme Court denied for the amendment.

6. For the purpose of appreciation for the entire arguments advanced by the parties, the ground taken in the petition, impugned order dated 13.5.2015 are perused.

7. By invoking the jurisdiction under Article 227 of the Constitution of India, this Court has to appreciate whether there is any illegality or impropriety in the order passed by the Court below or for affording opportunity to the parties any interference in the trial Court order is required or not.

8. From the appreciation of the entire material, it goes to show that at the time of filing of the amendment petition, evidence are yet to be

started, thereby the amendment application has been filed prior to the plaintiff's evidence. On perusal of the written statement and the amendment application it goes to show that in para 2 of the Annexure-P/4 instead of para 3 of the written statement para 2 has been mentioned and the same is a typographical error. As the Hon'ble Supreme Court held that in proviso Order 6 Rule 17 is not mandatory rather directive and in appropriate case permission for amendment may be given. In the present case, in the considered view of this Court, no prejudice is going to be caused to the plaintiffs as they have equal opportunity to amend their plaint and rebut the pleadings of the defendants. The case law in which the respondents have placed reliance is a matter where after 13 years of filing the suit application for amendment was made and that to abuse of the proceedings of the Court and in the present case it cannot be said that amendment application has been filed to abuse the proceedings.

9. In the larger interest of the justice while considering the entire facts, order passed by the trial Court requires interference. Consequently, the instant petition is hereby allowed. Application for amendment in the written statement is hereby allowed. The Court below is directed to allow the petition to incorporate the amendment in their written statement. Further directed that after affording opportunity to the respondents for the consequential amendment, if any, the Court below to proceed in accordance with law for further hearing. Petition is allowed. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE