

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(227) No. 902 of 2015**

Shrimati Sudha Girish Pandey w/o Shri Girish Pandey, aged about 55 years, R/o Rajendra Nagar Chowk, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. Dhanku Yadav, S/o Banshilal Yadav aged about 55 years, R/o village Mangla, Tahsil & District Bilaspur, Chhattisgarh.
2. State Of Chhattisgarh, Through The Collector, Bilaspur, District Bilaspur (Chhattisgarh).

---- Respondents

For the Petitioner	:	Shri Rajeev Bharat, Advocate.
For Respondent No.1	:	Shri S.N. Nande, Advocate.
For Respondent No.2/State	:	Shri Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order on Board****09/05/2016**

1. With the consent of both the parties, the matter is heard finally at the motion stage itself.
2. Facts in brief required for disposal of the instant W.P.(227) are that Civil Suit No. 430-A of 2014 filed by the Petitioner/Plaintiff is pending before the Fourth Civil Judge, Class-I, Bilaspur, Chhattisgarh for declaration and possession. The Respondents are the Defendants. In the said civil suit, issues were formulated and the matter was fixed for evidence of the parties. Till today, any of the parties had not filed Examination-in-Chief of the witnesses under relevant provisions of the Order XVIII Rule 4 of the Code of Civil Procedure, 1908 (for short 'the Code') and statement of any witness was not recorded. The Petitioner/ Plaintiff had filed an application under

Order VI Rule 17 read with Section 151 of the Code for amendment of the pleadings in the plaint. The Court below after hearing the parties on the said interim application, dismissed the said application for amendment on 4.9.2015 and held that as per the proviso to Order VI Rule 17 of the Code, the amendment application was filed after commencement of the trial and the Plaintiff failed to demonstrate any reason for delay. Hence, the trial Court dismissed the said application in which compliance of the proviso to Order VI Rule 17 of the Code was not done.

3. Against the said order, the Petitioner/Plaintiff has filed the instant W.P. (227) wherein the grounds taken in brief are that the evidence has not yet started, the application for amendment was filed immediately after the demarcation report was received, the amendment will not change the nature of the suit and no prejudice would be caused to the Respondents if the said application is allowed with an opportunity to the Respondents/Defendants to amend their written statements by filing consequential amendment. None of the parties has filed any affidavit as required under Order XVIII Rule 4 of the Code, hence, it is prayed that the said amendment application may be allowed and the order passed by the Court below dated 4.9.2015 may be quashed.

4. On behalf of Respondent No.1, written response/ objection has been filed wherein it is prayed that the trial is commenced and the matter is listed for evidence though till date evidence has not been recorded. Learned Counsel for Respondent No.1 submitted that as per provisions of Order VI Rule 15 of the Code there is no any verification done for the proposed amendment and also there is no any affidavit filed in support of the proposed amendment. The amendment was not sought before formulation of the issues and the commencements of the trial. Respondent No.1 was not a

party to the demarcation report. By the proposed amendment, the map earlier mentioned in Schedule-A was prayed to be substituted with the new proposed map as in Annexure-A. In the proposed map, no any direction is mentioned and as Respondent No.1 was not afforded an opportunity in the said demarcation proceeding, the substitution of the map as in Annexure-A may not be permitted. It is prayed that as the amendment has been prayed after formulation of the issues, there is no any scope for interference with the order dated 4.9.2015. Hence, the instant W.P.(227) may be dismissed.

5. On behalf of Respondent No.2, a preliminary submission was made wherein it is submitted that Respondent No.2 has been arrayed as a party before the trial Court and also before this Court to fulfill the requirement of the provision contained in the Code and no any substantial and effective relief has been sought by the Petitioner against Respondent No.2. Hence, the instant petition filed against Respondent No.2 may be dismissed.

6. Heard learned counsel for the parties and perused the record.

7. Learned counsel for the Petitioner duly supported the grounds taken in the instant W.P.(227) and submitted that the amendment as sought may be allowed and the Petitioner may be permitted to incorporate the said proposed amendment in the suit on the basis of the entire grounds taken in the instant W.P.(227).

8. Learned counsel for Respondent No.1 opposed the petition on the grounds taken in his written response/ objection and also orally submitted that the instant writ petition is not maintainable and the same may be dismissed.

9. From perusal of the entire case, it appears that though the issues were formulated but the evidence of the Plaintiff is yet to be started.

10. On behalf of the Petitioner, it is submitted that after the demarcation she is praying for the amendment in the plaint as per said interim application. As per settled law, i.e., proviso to Order VI Rule 17 of the Code, the application can be allowed only if the party satisfies the Court that despite the due diligence he could not raise the matter before the commencement of the trial. In the present case, as the evidence has not yet started, the Defendants have an opportunity to amend their written statements by way of consequential amendment. Immediately after the said demarcation report, the Petitioner has prayed for the amendment which cannot be held as delayed. So far as the verification and the affidavit in support of the proposed amendment are concerned, till date, the Petitioner has not incorporated the proposed amendment in the plaint. The provisions of Order VI Rule 15 of the Code may come into effect only after incorporation of the said proposed amendment. As the pleadings and the compliance of Order VI Rule 15 of the Code would still remain open before the trial Court and the trial Court may dispose of the same in accordance with law.

11. In the considered view of this Court, no prejudice is going to be caused to the Respondents as the evidence is yet to be started in the matter and the Petitioner has assigned satisfactory reason for the said delay and thereby fulfilled the requirement of proviso to Order VI Rule 17 of the Code. Consequently, the order of the Court below requires interference.

12. Accordingly, the instant W.P.(227) is hereby allowed and order dated 4.9.2015 is hereby set aside. The Petitioner/ Plaintiff is allowed to incorporate the proposed amendment in her plaint. The Respondents, if they so wish, may file an application for consequential amendment and if

any such application is filed, the Court below shall dispose of the same after hearing the parties as required by law. If any prayer regarding compliance of Order VI Rule 15 of the Code is made before the Court below, the Court below shall also dispose of the said prayer in accordance with law.

13. The parties may file a copy of this order before the Court below for compliance.

14. Registrar (Judicial) is directed to send a copy of this order immediately to the Court below for compliance through usual and fax modes.

15. The W.P.(227) is allowed.

16. Certified copy of the order as per rules.

Sd/-

Chandra Bhushan Bajpai
Judge