

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****WP227 No. 1025 of 2015**

1. Ashok Jaiswal S/o Shri R.P. Jaiswal, Aged About 42 Years R/o Rajasva Colony, Bilaspur, Tahsil & District Bilaspur Civil & Revenue Distirct Bilaspur Chhattisgarh

---- Petitioner

**Versus**

1. Vimlabai Wd/o Late Mannulal Soni, Aged About 62 Years R/o Village Jamha, Tahsil & District Mungeli, Chhattisgarh

---- Respondent

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| For Petitioner | : | Shri Vivek Shrivastava, Advocate |
| For Respondent | : | Shri M.K. Bhaduri, Advocate      |

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**Hon'ble Shri Justice Chandra Bhushan Bajpai****Order On Board****26/02/2016**

1. Brief facts for consideration of the instant Writ Petition (227) are that before the IInd Additional District Judge, Mungeli, District Bilaspur(CG), Civil Suit No.36A/11 (Ashok Jaiswal Vs. Vimla Bai) for specific performance of the contract is pending wherein on behalf of the petitioner/plaintiff an application under Order 6 Rule 17 read with Section 151 of the Civil Procedure Code, 1908 (for short the Code) and one other application under Section 151 of the Code has been filed. After hearing the parties, the Court below dismissed both the interim applications vide order dated 16.9.2015.

2. By filing the first application for amendment in the plaint, the plaintiff/petitioner prayed that the date of agreement mentioned in the plaint as 10.2.2007 may be deleted and the date 10.12.2007 be substituted. The Court below held that by praying the said amendment date of the agreement is going

to be changed. The said document is not a part of the pleadings of the plaintiff. There is delay for amendment. No reason has been assigned for it. The plaintiff, to delay the trial had filed the said application. With this, the trial Court rejected the prayer for amendment.

3. On hearing on another application, whereby it is prayed that in the light of the proposed amendment, the plaintiff be permitted to withdraw his examination-in-chief filed under Order 18 Rule 4 of the Code. He be permitted to file fresh examination-in-chief under Order 18 Rule 4 of the Code. The Court below held that as the application for amendment is rejected and there is no question to return the examination-in-chief submitted under the provisions of Order 18 Rule 4 of the Code, hence, the Court below also rejected the said application.

4. Against the order passed by the trial Court on the above both interim applications, the petitioner/plaintiff has preferred the instant writ petition wherein the grounds are taken that the impugned order is perverse and not sustainable in the facts and circumstances of the present case as also it is against the settled law. The amendment sought by the petitioner is necessary for determination of the controversy. No new cause of action has been pleaded with the proposed amendment. Only on the typographical mistake which had come to the notice of the plaintiff while preparation of the case for evidence and immediately the application has been moved. The amendment is trivial in nature. The cross-examination of the plaintiff is yet to be started. Hence, it is prayed that the instant writ petition may be allowed and the order passed by the trial Court dated 16.9.2015 be quashed. The petitioner may be permitted to amend the plaint and also be permitted to file a fresh examination-in-chief under the provisions of Order 18 Rule 4 of the Code.

5. Heard learned counsel for the parties and perused the material on

record.

6. It is submitted on behalf of the petitioner that from bare perusal of the said stamp on which agreement is written goes to show that the same stamp was purchased from the treasury by the Stamp Vendor on 5.10.2007 and thereafter on 7.12.2007, the Stamp Vendor sold the stamp to the respondent-Vimlabai. Also on 2 occasions, inside the round seal of the Notary affixed on the front side of the agreement, the date is clearly mentioned as 10.12.2007. With this, though in the agreement date is written as 10th February, 2007 but when the stamp itself was sold by the Registry and purchased by the Stamp Vendor on 5.10.2007, the agreement could not be entered into on 10th February, 2007 which clearly indicates the typographical mistake, came to the knowledge of the petitioner during preparation, is bonafide. The cross-examination of the petitioner's witnesses were yet to be commenced. There is no change in the nature of the suit and other facts, hence, the petition may be allowed and the order rejecting the amendment may be quashed. Also submitted that in the earlier examination-in-chief in the form of affidavit under Order 18 Rule 4 of the Code, the date in relation to the agreement is shown as 10.2.2007. Hence, it is prayed that the petitioner may be permitted to withdraw the same and to file a fresh affidavit in the form of examination-in-chief under Order 18 Rule 4 of the Code.

7. On the other hand, learned counsel for the respondent opposed the prayer and submitted that it is not a typographical mistake. By the proposed amendment, the petitioner wants to change the entire nature of the suit including limitation issue and as per the settled law, he may not be permitted to amend the plaint in such a way where the nature of the plaint be changed and the document is also going to be changed, therefore, the petition may be dismissed.

8. For the purposes of appreciation of the arguments advanced, the instant Writ Petition (227), the grounds taken and the documents annexed are perused.

9. As a settled law, the plaintiff may not be allowed to amend the pleadings in such a way if it changes the nature of the suit and other facts. From perusal of the document impugned, goes to show that the said stamp was sold to the Stamp Vendor on 5.10.2007 by the Treasury and it was again sold to the respondent/defendant on 7.12.2007. These dates reflects at the back of the stamp. On the front side of the stamp, round seal of the Notary is affixed. Inside the seal No.3289/10.12.2007 is mentioned. From perusal of the above referred dates for total plaint in number, goes to show that prima facie, unless contrary is proved that too subject matter of the appreciation of that document by the Court below after adducing evidence, the date written on the agreement as 10.2.2007 is merely a typographical error and prima facie for the appreciation of the instant writ petition only, this Court is of the opinion that the document cannot be for the date 10.2.2007 otherwise it may belongs to a document executed probably on 10th December, 2007. If so, to impart the justice, it would be appropriate that the plaintiff may be given an opportunity to amend his plaint so that he may get an opportunity to exhibit and prove his pleadings on a corrected date. Needless to mentioned that the defendant has always an opportunity to rebut the pleadings and to prove the pleadings of his own. The evidence of both the parties is yet to be started. Only the statement of his examination-in-chief on oath under Order 18 Rule 4 of the Code were filed on behalf of the plaintiff. At the present stage, looking to the above facts no prejudice is going to be caused if the prayer made in this behalf as above by the petitioner be allowed.

10. Consequently, the instant writ petition deserves to be and is hereby allowed. The order passed by the Court below dated 16.9.2015 is hereby

quashed. The petitioner/plaintiff is permitted to incorporate the amendment as prayed in Annexure P/4 in the plaint. Thereafter, the trial Court is directed to grant an opportunity to the respondent/defendant to amend his plaint for the consequential amendment of pleading, if she so wish. If any application is filed in this behalf, after due hearing the said application be disposed of in accordance with law.

11. The prayer for taking back the examination-in-chief in the form of affidavit as per Order 18 Rule 4 is allowed to the extent that wherever the date "10.2.2007" is mentioned in those affidavits, same may be read as "10.12.2007". The trial Court is further directed that after the amendment and consequential amendment to proceed further in the matter in accordance with law.

12. Needless to mentioned that whatever is observed by this Court regarding the authenticity of the date of execution of the agreement it shall not be treated as finality for the trial Court and the trial Court while appreciating the entire facts may hold regarding the date of execution of the document on the basis of entire evidence adduced before them during trial at the time of judgment.

13. The petition is allowed.

14. No order as to cost.

Sd/

(Chandra Bhushan Bajpai)

Judge