

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 488 of 2016**

1. Omprakash Dewangan (Dead) Through LR's

1. 1. Smt. Rajkumari Aged about 55 Years Wd/o Omprakash Dewangan, R/o Sankra, Tahsil Berla, District Bemetara (Chhattisgarh)
1. 2. Tejkumar @ Pranjal Aged about 27 Years S/o Omprakash Dewangan, R/o Sankra, Post Hasda, Tahsil Berla, District Bemetara (Chhattisgarh)
1. 3. Priti Dewangan Aged about 33 Years D/o Omprakash, R/o Sankra, Hasda, Tahsil Berla, District Bemetara (Chhattisgarh)
1. 4. Baleshwar @ Ashish Aged about 29 Years S/o Omprakash Dewangan, R/o Sankra Hasda, Tahsil Berla, District Bemetara (Chhattisgarh)
1. 5. Poonam Dewangan Aged about 31 Years D/o Omprakash Dewangan, R/o Sankra Hasda, Tahsil Berla, District Bemetara (Chhattisgarh)
1. 6. Rashmi Dewangan Aged about 30 Years D/o Omprakash Dewangan, R/o Sankra, Tahsil Berla, District Bemetara (Chhattisgarh)

---- Petitioner**Versus**

1. Ku. Neelu D/o Late Deepak Ram Dewangan, Aged About 19 Years R/o Village Sankra, Tahsil Berla, District Durg (Chhattisgarh) Presently Residing at Shanti Vihar Colony, Raipur, District Raipur (Chhattisgarh)
2. Dukalu Ram (Dead)
3. Smt. Krishna Bai Wd/o Deepak Ram Dewangan, Aged About 40 Years R/o Shanti Vihar Colony, Raipur, Post Raipur, District Raipur (Chhattisgarh)
4. State Of Chhattisgarh, Through Collector, Durg, District Durg (Chhattisgarh)

---- Respondent

For Petitioner	Shri H. B. Agrawal, Senior Advocate with Ms. N. K. Kashyap, Advocate
For Respondent-State	Shri Shashank Thakur, GA

Hon'ble Justice Shri Prashant Kumar Mishra

Order On Board

16/08/2016

1. The petitioners are the legal heirs of original defendant No.2, Omprakash Dewangan. By the impugned order, the trial Court has rejected their application under Section 151 CPC as also under Order 6 Rule 17 CPC. In the first application, the petitioners have prayed for recall of plaintiff's witnesses namely, Ku. Neelu and Panchram who were examined on 29.11.2004 and in the year 2000-01 respectively, in their absence, therefore, they be recalled for providing opportunity to the petitioners for cross-examining the said witnesses.
2. Admittedly, Omprakash Dewangan has died sometimes in the year 2005, therefore, the above witnesses were examined during his life time. It is not stated by the petitioners that their stand in the suit is different than the stand taken by Omprakash Dewangan. If the witnesses were examined and cross-examined by the lawyer engaged by Omprakash Dewangan, additional opportunity is not to be provided to the legal heirs for cross-examining the witnesses.

3. Similarly for the application under Order 6 Rule 17 CPC, it is to be seen that in the suit, which is pending since 2002, the plaintiff's evidence was closed on 12.01.2005. When the matter is posted for recording statement of defendant's witnesses, the subject application has been filed seeking permission to amend the written statement. In this application, the petitioners have stated that defendant No.1, Dukaloram Dewangan has died on 01.02.2014, therefore, pleadings are necessary to be made in this regard. Similarly, pleadings are necessary to be made in regard to another Civil Suit No.5A/1988 and 39A/2014.
4. It is apparent that both the suits are pending since long and further that the said suits shall be decided on the strength of the pleadings and evidence adduced by the parties therein, it is not a case where the petitioners or any other party have moved any application for trying all the suits together or for stay of the subsequently preferred suits under Section 10 CPC.
5. In proviso to Order 6 Rule 17 CPC, it is provided that party shall not be permitted to amend the pleadings after trial has begun, if the concerned party could have made the pleadings and has failed to do so despite due diligence. No such averment has been made in the application that despite due diligence, the petitioners could not have raised the pleadings. Since the petitioners have not crossed the jurisdictional bar as provided under the proviso to Order 6 Rule 17 CPC, the trial Court has rightly refused to allow

the application.

6. Shri H. B. Agrawal, learned Senior counsel has vehemently argued that the petitioners have been noticed in the suit only in 2015, therefore, the trial Court's observation and imposition of cost on the petitioners that they are unnecessarily delaying the progress in the suit is wholly uncalled for.
7. Having seen the summons issued to the petitioners filed as Annexure-P-15, the submission made by the learned Senior counsel appears to be somewhat justified, therefore, the cost imposed on the petitioners while dismissing the application is set aside. The trial Court is directed to expedite the hearing of the suit.
8. Accordingly, the writ petition stands disposed of.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

Nirala