

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WP227 No. 671 of 2015**

Smt. Mongra Gupta W/o Late Shardchandra Gupta Aged About 50 Years R/o
Om Nagar, Jahabhata, Bilaspur, Tahsil & District Bilaspur (CG)

---- Petitioner**Versus**

1. Smt. Punam Agrawal W/o Rajesh Agrawal Aged About 50 Years

2. Rajesh Agrawal S/o Phoolchand Aged About 58 Years

Both Resident of Brahsapati Bazar, Bilaspur, Tahsil & District Bilaspur (CG)

---- Respondents

For Petitioner	:	Dr. Shailesh Ahuja, Advocate.
For Respondents	:	Mr. Somnath Verma, Advocate.

Order On Board**16/02/2016**

1. Heard the matter finally at motion stage.
2. Brief facts of the case are that Civil suit No. 77-A/2015 (Smt. Mongra Gupta -v- Smt. Punam Agrawal and anr.) is pending before 10th Civil Judge Class II, Bilaspur wherein the present petitioner/plaintiff had filed an application under Section 6 Rule 17 read with Section 151 of the C.P.C. The court below after hearing both the parties in the matter, dismissed the prayer made regarding amendment in the plaint and observed that there is no change in the circumstances and no facts are shown as to why the plaintiff did not incorporate said amendment during filing of the plaint, the written statement and cross-suit has been filed and the prayer for amendment is not bonafide. Against said order, the petitioner had filed instant writ petition wherein it is submitted that till date, issues are not framed. The trial has not yet commenced, other interim applications are also pending and the amendment sought would be helpful to adjudicate the matter properly. By the proposed amendment, nature of the suit is not going to be changed. Details were shown distinctly in the proposed amendment regarding pleading hence it is prayed that by allowing the instant writ petition, plaintiff/petitioner may be permitted to amend the plaint by allowing the application for amendment.
3. Learned counsel for the respondents opposed the petition.
4. Learned counsel for the petitioner submits that in the light of the grounds taken in the petition, looking to the stage of hearing before the court

below, the amendment is not going to change the nature of the plaint, rather it makes the earlier pleadings of the plaint specific, the trial has not commenced hence no prejudice could be caused. The respondents may pray for any consequential amendment if he so wish. Therefore, the petition may be allowed.

5. On the other hand, learned counsel for the respondents opposed the petition and submitted that the order passed by the trial Court is well founded. The plaintiff has failed to demonstrate the reason as to why he had not included those amendments in the pleadings at the time of filing of the plaint. They are praying for the amendment after the written statement and cross-suit are filed without any substantive reason. Hence the petition may be dismissed as not maintainable.
6. For appreciating the arguments advanced, I have perused the writ petition and its annexures.
7. Close scrutiny of the facts goes to show that till date issues are not framed. The case is not listed for settling the date, two interim applications are pending. As per order dated 4-7-2015 only cross-suit and written statement are filed. Trial has not commenced. Therefore, proviso to Order 6 Rule 7 of the C.P.C. are not attracted. Even from perusal of the entire order impugned and other facts it may not be held that by proposed amendment, the petitioner/plaintiff is going to change the very nature of the suit. Even otherwise, respondents/defendants may also get an opportunity of consequential amendment if prayed for.
8. On due consideration, in the larger interest of justice, I am inclined to allow the instant writ petition. Consequently the same is allowed. The order passed by the trial Court dated 4-7-2015 is hereby quashed. Prayer for amendment is hereby allowed. The petitioner is directed to amend the plaint within 15 days from the next date of hearing before the trial Court. The court below is directed to grant an opportunity to the respondents for consequential amendment if they wish so and if any such application is filed the same may be disposed of after hearing the parties as per law.
9. The petition is allowed. No order as to costs.

Sd/-
(Chandra Bhushan Bajpai)
Judge

