

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 741 of 2015**

1. Ramkumar Tiwari S/o Late Anantram Tiwari, aged about 75 years, Resident of Idgahbhatha, Mangal Bazar, Gali No. 4, Near Vivekanand Ashram, Raipur, Tahsil and District-Raipur (Chhattisgarh)Defendant,
2. Pramod Kumar Tiwari S/o Shri Ramkumar Tiwari, aged about 44 years, Resident of Idgahbhatha, Mangal Bazar, Gali No. 4, Near Vivekanand Ashram, Raipur, Tahsil and District-Raipur (Chhattisgarh)Defendant.

---- Petitioners**Versus**

1. Vikram Shukla S/o Shri Rakesh Shukla, aged about 22 years, Resident of Shanti Vihar Colony, Danganiya, Near Gyan Sarita Vidhya Mandir School, Raipur, Tahsil and District-Raipur (Chhattisgarh)Plaintiff,
2. Rishabh Shukla S/o Shri Rakesh Shukla, aged about 21 years, Resident of Shanti Vihar Colony, Danganiya, Near Gyan Sarita Vidhya Mandir School, Raipur, Tahsil and District-Raipur (Chhattisgarh)Plaintiff.
3. Branch Manager, Bhartiya Jeevan Beema Nigam, Mowa Road, Pandri, Raipur, Tahsil and District-Raipur (Chhattisgarh)Defendant,
4. State of Chhattisgarh, through the Collector, Raipur, Collectorate Office, Raipur (Chhattisgarh) Defendant.

---- Respondents

For Petitioners – Mr. V.R.Tiwari, Advocate.

For Respondents 1 and 2 – Mr. Rakesh Thakur, Advocate.

For Respondent No.4 – Ms. M.Asha, Panel Lawyer.

For Respondent No.3 – None, though represented.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order on Board****09/03/2016**

1. Looking to the matter as in the instant WP(227), the petition heard finally at the motion stage itself.
2. Facts in brief required for disposal of the instant WP(227) are that Case No.33A/2014 (Vikram Shukla and another Vs. Ram Kumar Tiwari and others) for declaration and permanent injunction is pending before the First Civil Judge Class-II, Raipur, C.G. In the said civil suit defendants 1 and 2/petitioners had filed an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908

(in short 'the Code') for amendment in the pleadings at para 6 of their written statement. The Court below after hearing both the parties passed the order dated 14-07-2015 and held that initially in para 6 of the written statement, the defendants 1 and 2 admitted para 6 of the plaint and thereafter by proposed amendment they are praying that written statement may be amended and word 'अ' be added before word 'स्वीकार'. The Court below vide impugned order held that with the proposed amendment the pleadings are going to be changed; no specific reason was assigned while initially admission and thereafter for denial for the para 6 of the plaint. Hence, the Court below held that the application makes the condition suspicious and refused the application. Against the said order defendants 1 and 2/petitioners filed the instant WP(227) and prayed that as on account of typographical mistake instead of word 'अस्वीकार' word 'स्वीकार' is mentioned, it requires correction and therefore it is prayed that the petition may be allowed and the relief as sought in the interim application under Order 6 Rule 17 may be allowed.

3. Learned counsel for the petitioner supported the grounds taken in the instant WP(227) and prayed that relief as sought may be given by setting aside the order dated 14-07-2015 and allowing the application under Order 6 Rule 17 of the CPC for amendment in para 6 of the written statement of the petitioners.

4. On behalf of the respondents, the petition is opposed orally.

5. Learned counsel for the respondents 1 and 2 opposed the petition and submitted that by the said amendment the very nature of the written statement is going to be changed; no reason is assigned, hence, the petition may be dismissed.

6. For the purposes of appreciation of the arguments advanced on behalf of the parties, I have perused the petition and the documents annexed along with the petition.

7. From perusal of the impugned order, it goes to show that trial of the said case is not yet commenced. The matter was fixed for formulation of the issues. With this, proviso of Order 6 Rule 17 of the Code is not applicable. Even otherwise, from perusal of the pleadings of para 6, it goes to show that simplicitor there is an admission regarding pleadings of plaintiff at para 6. By way of amendment the petitioners/defendants 1 and 2 prayed that word 'अ' be added as amendment before the word 'स्वीकार', as per para 2 of the amendment application. From perusal of the prayer, it goes to show that it is submitted that on account of typographical mistake, the said word 'अ' was not written as aforementioned and also even after perusal of the entire para 6, after amendment whether the pleadings earlier in para 6 of the written statement are changed or not, it will be open for trial. Looking to the prayer as made in para 2 of the interim application (Annexure -P/4), in the considered view of this Court, the impugned order requires interference.

8. Consequently, the instant WP(227) deserves to be and is hereby allowed. The impugned order dated 14-07-2015 is hereby quashed. The Court below is directed to allow the petitioners/defendants 1 and 2 to amend their pleadings in their written statement at para 6 as prayed as per para 2 of the interim application, immediately.

9. After incorporation of the said amendment, the respondents may pray for any consequential amendment if they wish to do so and if any amendment application of the consequential nature is filed before the Court below within stipulated time as required under the law, the Court below shall after affording opportunity of hearing to other party i.e. defendants 1 and 2/petitioners dispose of the said application for consequential amendment as per provisions of law and thereafter the Court below is directed to proceed further with the trial.

10. The petition allowed with the directions aforementioned.

11. No order as to cost.

12. The petitioners may file copy of this order before the trial Court for compliance.

13. Registrar (Judicial) is also directed to send copy of the order to the Court below through usual mode and fax mode immediately for information and compliance.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE