

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.176 of 2014**

T.S. Dewangan, S/o late Shri Saryara Dewanagan, aged about 70 years, Architect, R/o near Chhattisgarh College, Bairan Bazar, Raipur, P.S. Raipur, Tahsil and District Raipur (C.G.)

---- Petitioner**Versus**

Pappu @ A. Farista, aged about 45 years, S/o late Gulam Ali Farista, R/o Quarter No. Ground Floor-4C-1, Ravi Nagar Housing Colony, behind EAC Colony, Raipur, Tahsil and District Raipur, Tahsil and District Raipur (C.G.)

---- Respondents

 For Petitioner : Mr.G.D. Vaswani, Advocate
 For Respondent : Mr.Ravi Mahobia, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****29/11/2016**

1. The petitioner herein is the plaintiff before the trial Court. He filed a suit for eviction and arrears of rent before the trial Court on 04.05.2009, in which the defendant/respondent was summoned. The respondent/defendant has filed his written statement on 17.08.2009. Thereafter the plaintiff filed his affidavit under Order 18 Rule 4 of the CPC on 23.04.2010 and thereafter amendment application was filed on 04.03.2012 running into five pages, which was opposed by the defendant.

2. By the order impugned, the trial Court has rejected his application for amendment holding that application is barred by proviso to order 6 Rule 17 of the CPC.

3. Feeling aggrieved against the order rejecting application for amendment, this writ petition has been filed.

4. Mr.G.D. Vaswani, learned counsel appearing for the petitioner would submit that the proposed amendment was filed only to elaborate the pleadings already made and the trial Court has committed illegality in rejecting the application for amendment and, therefore, the application for amendment may be allowed by setting aside the order impugned.

5. Per contra, Shri Ravi Mahobia, learned counsel appearing for respondent /defendant would submit the trial has already commenced and there is no reason assigned in the application that as to why such amendments could not be filed at the earlier point of time; plaintiff filed his affidavit under Order 18 Rule 4 of the CPC on 23.04.2010 and thereafter amendment application was filed on 04.03.2012 running into five pages i.e. more than the plaint cannot be allowed to be amended in view of judgment of the Supreme Court in the matter of **Vidyabai and others vs. Padmalatha and another**¹ and, therefore, the writ petition deserves to be dismissed.

6. I have heard learned counsel appearing for the parties and perused the order impugned.

7. In order to decide the plea raised at the Bar, it would be appropriate to notice Order 6 Rule 17 of the CPC which reads as under:-

“17. Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms

1 (2009) 2 SCC 409

as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

8. A careful reading of proviso to Order 6 Rule 17 of the CPC, which was brought into statute book on 1.7.2002 reveals that application for amendment cannot be entertained after the trial has commenced, unless the party making amendment has established that in spite of due diligence the party could not have raised the matter before the commencement of trial.

9. The aforesaid proviso came into consideration before the Supreme Court in **Vidyabai and others (Supra)** and it has been held that it is couched in a mandatory form. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied and the trial Court must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial. In **Vidyabai** case (supra), it has also been considered that filing of an affidavit in lieu of examination-in-chief of the witness would amount to commencement of proceeding and held as under:-

“11. From the order passed by the learned Trial Judge, it is evident that the respondents had not been able to fulfill the said precondition. The question, therefore, which arises for consideration is as to whether the trial had

commenced or not. In our opinion, it did. The date on which the issues are framed is the date of first hearing. Provisions of the Code of Civil Procedure envisage taking of various steps at different stages of the proceeding. Filing of an affidavit in lieu of examination in chief of the witness, in our opinion, would amount to 'commencement of proceeding'.

Their Lordships further considered the meaning of the terms of "trial" and "commence" and observed as under:-

"19. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint."

10. Thus, proviso to Order 6 Rule 17 of the CPC is mandatory in nature. Keeping in view the proviso to Order 6 Rule 17 CPC and the judgment rendered by the Supreme Court in the matter of Vidya Devi (Supra), if the facts of present case are examined, it is quite vivid that the suit was filed way back on 4.5.2009; the plaintiff filed his affidavit under Order 18 Rule 4 of the CPC on 23.04.2010 and thereafter only on commencement of trial, amendment application was filed on 04.03.2012 running into five pages, which was opposed by the defendant; the trial Court has reached to the conclusion that proviso to Order 6 Rule 11 CPC has not been complied with and the writ petitioner/plaintiff did not aver in his application for amendment that in spite of due diligence he could not have raised the matter before the

commencement of trial as the application for amendment filed by the petitioner is blissfully silent. Concludingly, this Court has left with no other option except to affirm the order of the trial Court dismissing the application for amendment as the application for amendment filed after commencement of trial has failed to establish that despite due diligence the plaintiff could not move amendment before the Court.

11. Applying its earlier decision in **Surya Dev Rai v. Ram Chander Rai**² and **Shalini Shyam Shetty v. Rajendra Shankar Patil**³, the Supreme Court in **Sameer Suresh Gupta through PA Holder v. Rahul Kumar Agarwal**⁴ has held that supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. It has also been held that supervisory jurisdiction or certiorari jurisdiction is not available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby. The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in

² (2003) 6 SCC 675

³ (2010) 8 SCC 329

⁴ (2013) 9 SCC 374

appropriate cases where the judicial conscience of the High Court dictates it to act least a gross failure of justice or grave injustice should occasion.

12. Accordingly, the writ petition filed under Article 227 of the Constitution of India deserves to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-