

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 702 of 2015**

Rajesh S/o Bhagwan Das, Aged About 32 Years Caste- Baniya, R/o Village Unchhdeeh, Police Chowki- Basdei, Police Station And Tahsil Surajpur, District Surajpur, (Chhattisgarh)

---- Petitioner**Versus**

1. Kuber Prasad S/o Shankar Prasad, Aged About 45 Years Caste- Baniya, Occupation- Agriculture, R/o Village- Basdei, Police Chowki- Basdei, Police Station And Tahsil Surajpur, District Surajpur, (Chhattisgarh)
2. Girwar Prasad, S/o Sukul, Caste- Rajwar, Aged About 15 Years R/o Village Sunderpur (Sauki), Being Minor Through: Natural Guardina Father- Sukul, S/o Shobhit Ram, Aged About 40 Years, Chowki- Basdei, Police Station And Tahsil- Surajpur, District Surajpur, (Chhattisgarh)
3. State Of Chhattisgarh, Through: The Collector, District Surajpur, (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Ashok Kumar Shukla, Advocate.
For Respondent No.1	:	Ms. K. Tripti Rao, Advocate.
For Respondent No.2	:	None.
For Respondent No.3/ State	:	Shri Aditya Sharma, Panel Lawyer.

Order On Board**06/01/2016**

1. With the consent of both the parties, the matter is heard finally.
2. The Petitioner has filed the instant WP (227) against the order passed by the Court below i.e. Second Civil Judge, Class-II, District Surajpur, Chhattisgarh in Civil Suit No. 378-A of 2012 (Kuber Prasad vs. Rajesh and 2 Others), whereby and whereunder the Court below dismissed the interim application filed on behalf of Defendant No.1/ Petitioner under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short 'the Code') and held that as per (2009) 2 SCC 409 (Vidyabai and Others vs. Padmalatha and Another) the amended proviso in Order VI Rule 17 of the Code is mandatory and the

Court may under exceptional circumstances only allow the amendment by exercising its discretionary power.

3. By filing the instant WP (227), the Petitioner has submitted that the impugned order dated 14.5.2015 suffers from illegality and impropriety and it deserves to be set aside. By the proposed amendment, the nature of the suit will not change. There is no question of causing delay in disposal of the case. The Court has to consider the proposed amendment liberally because the valuable rights of the parties shall be decided in the civil suit and at the time of filing of the application Plaintiff's evidence was not supported. Hence, it is prayed that the impugned order dated 14.5.2015 be set aside and the proposed amendment be permitted to be incorporated in the written statement/ counter suit.

4. On behalf of Respondent No.1, written response has been filed wherein the grounds have been taken that the amended proviso is mandatory, the proposed amendments were sought to be incorporated after 11 years, the reason for delay is not mentioned, issues were framed, the trial is commenced and Defendant No.1 failed to demonstrate that despite due diligence the party could not have raised the matter before the commencement of the trial. In the reply, reliance is placed on (2009) 3 SCC 513 (Mohammed Yusuf vs. Faij Mohammad and Others) and has taken the ground that the case as cited by the Court below is applicable and the Court below has not committed any illegality and impropriety in rejecting the prayer for amendment. Hence, the petition may be dismissed.

5. Heard counsel for the parties and perused the record.

6. Learned counsel for the Petitioner supported the grounds taken in the petition and submitted that the said proviso does not come in the way as the

amendment relates to subsequent development. After institution of the suit, the Petitioner/ Defendant No.1 had filed the written statement/ counter claim to the proposed amendment and the same does not cover under the proviso of Order VI Rule 17 of the Code. The evidence is yet to be commenced. The developments are after filing of the suit and therefore, they are subsequent in the nature. The nature of pleadings are not changed if at all the amendments are incorporated and no harm will cause to any of the parties because the evidence is yet to be recorded by the Court below.

6. On the other hand, Learned counsel for Respondent No.1 duly supported the reply/ written statement filed in the matter and submitted that the proviso to Order VI Rule 17 of the Code is with two limbs. First part is of mandatory character. The issues have been framed thereby, the trial is commenced. The prayer as made in the amendment application relates to the year 2003 and after lapse of 11 years the prayer for amendment is made. Learned counsel further submits that the case law cited, i.e., (2009) 2 SCC 409 (Vidyabai and Others vs. Padmalatha and Another) is applicable to the present case. Hence, the petition may be dismissed.

7. To appreciate the arguments advanced on behalf of the parties, I have perused the documents annexed by the parties.

8. From perusal of the entire facts, it reveals that the issues were framed but there is no pleading to the effect that any settling date for examination of the witnesses was given or not.

9. Upon perusal of the proposed amendment, it shows that Defendant No.1 in paragraph 2 of the amendment application mentioned the reason and explanation for the amendment in the written statement/cross-suit though at some parts the facts remained with regard to November, 2003, but

for the other part the matter requires complete adjudication and appreciation on merits and they cannot be separated as the alleged act as mentioned in the application is of continuing nature. As per settled law, now it is held that proviso to Order VI Rule 17 of the Code is not mandatory and in proper cases the Court may allow the proposed amendments. In the impugned judgment, the Court below has cited the judgment of the Hon'ble Apex Court, but has not reiterated the exceptional circumstances on which permission to amend the plaint / written statement can be given.

10. After perusal of the entire application, the fact remains that the Plaintiff's evidence has not yet commenced. In the absence of any material it cannot be ascertained whether the Court fixed the date for settling. From perusal of the last line of the impugned order, it shows that the matter was fixed for further proceedings regarding Defendant No.2 shows that probably no agreed date was given to the parties after formulation of the issues.

11. Looking to the proposed amendments, their effect and nature and the facts and pleadings, this Court is of the view that the case law cited is not applicable. In the present case, the facts are different. In the larger interest of justice, for complete adjudication, it would be appropriate to grant leave for the amendment.

12. Consequently, the instant petition is allowed and the impugned order dated 14.5.2015 is hereby set aside. The Court below is directed to allow the proposed amendment and after affording opportunity to the parties to proceed further for hearing as per law.

Sd/-

Chandra Bhushan Bajpai
Judge