

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 674 of 2016**

- Smt. Sujata Mitra W/o Prasannajeet @ Subhash Mitra, Aged About 44 Years R/o Vinoba Nagar, Near Gali No. R-2, Bilaspur, Tahsil & District Bilaspur, (Chhattisgarh)

---- Petitioner**Versus**

1. Dr. Krishna Pratap Pandey S/o Shri Keshav Prasad Pandey, Aged About 46 Years R/o Imlipara, Gali No.2, Old Bus Stand Road, Bilaspur, Tahsil & District Bilaspur, (Chhattisgarh)
2. State of Chhattisgarh, Through Collector, Bilaspur, District Bilaspur, (Chhattisgarh) (Formal Party)

---- Respondents

For Petitioner	:	Shri Sudhir Kumar Bajpai, Advocate
For Respondents-State	:	Shri Rajendra Tripahi, PL for the State

Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board

09/11/2016

1. By the impugned order the trial Court, who is trying the suit for specific performance of contract moved by the respondent/plaintiff, has dismissed petitioner's/defendant's application under Order 6 Rule 17 CPC.
2. In the proposed pleadings, the defendant has sought to raise objection that the suit is barred by limitation.
3. It is argued that on an earlier occasion an application under Order 14 Rule 5 CPC was moved for framing of additional issues, which was rejected by the trial Court where against the petition under Article 227 of the Constitution of India bearing WP 227 No.703/2015 was dismissed on 11.07.2016 on the ground that there is no plea in the petitioner's written statement about the

point of limitation.

4. In the proviso to Rule 17 of Order 6 CPC, parties would not be permitted to amend the pleadings after the trial has begun. The present suit was fixed for recording of evidence of the parties on 11.03.2015. As on date, the plaintiff has already closed his evidence thus, the trial has not only begun but it has advanced to the stage of recording evidence of defendant's witnesses.
5. In the matter of **Vidyabai and Others Vs. Padmalatha and Another**¹, the Supreme Court has held thus in para:-

"10. By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), Parliament inter alia inserted a proviso to Order 6 Rule 17 of the Code, which reads as under:

“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.”

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 viz. it 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.

11. From the order passed by the learned trial Judge, it is evident that the respondents had not been able to fulfil 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”.

¹ (2009) 2 SCC 409

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 6 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."

6. In view of the above settled principle the trial Court has not committed any error in rejecting the prayer for amendment.
7. Petitioner's counsel would refer to Section 3 of the Limitation Act to argue that the trial Court is competent and empowered to decide the issue of limitation even without pleadings. While hearing the present petition preferred against the rejection of application under Order 6 Rule 17 CPC, this Court would not comment upon the impact of the provisions contained under Section 3 of the Limitation Act. The petitioner may bring the said provision to the notice of the trial Court at the appropriate time.
8. Accordingly, the writ petition stands disposed of.

Sd/-

Judge
Prashant Kumar Mishra

Ashu