

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.327 of 2016**

Mahesh Jani S/o Late (Shri) Gunwant Rai Jani, Aged-49 years, Caste Gujrati Brahmin, Occupation-Business, R/o Kamthi Line, Rajnandaon, Post & Tahsil-Rajnandgaon, District Rajnandgaon (CG)

---- Petitioner

Versus

1. Smt.Suryamukhi Devi, Rajgami Sampada, Samiti Rajnandgaon (A registered Trust under M.P. Public Trust Act) represented through Secretary, District Office Premises, Rajnandgaon, Teh & Distt.Rajnandgaon (CG)
2. Vyavsthapak Rajgami Sampada, Tahsil Office Premises, Rajnandgaon, Post Rajnandgaon, Tahsil and District Rajnandgaon (CG)

---- Respondents

 For Petitioner : Mr.Arvind Shrivastava, Advocate
 For Respondents : Mr.B.P.Gupta and Mrs.Richa Jain,
 Advocates

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****04/11/2016**

1. By the impugned order, the trial Court has rejected the application filed by the petitioner/plaintiff under Order 6 Rule 17 of the CPC holding that it is belated as well as as a result of afterthought.
2. Against which, this writ petition has been filed.
3. Learned counsel for the petitioner would submit that amendment is essential for deciding the real controversy between the parties and trial has not commenced on the

date of filing of the application. He would rely upon the judgment of the Supreme Court in the matters of **Mount Mary Enterprises Vs. Jivratna Medi Treat Pvt. Ltd.**¹ and **Vidyabai and Ors. Vs. Padmalatha and Anr.**²

4. On the other hand, learned counsel appearing for the respondents would submit that the petitioner is tenant, suit was filed on 4.3.2008 and written statement was filed on 12.11.2008, yet the trial has not commenced on the delay and tactics adopted by the petitioner.
5. I have heard learned counsel appearing for the parties and perused the documents appended with the petition.
6. It appears that the suit was filed on 4.3.2008, written statement was filed on 12.11.2008, issues have been framed on 13.10.2014 and amendment application has been filed as late on 14.3.2016.
7. By proposed amendment, the petitioner/plaintiff is seeking to add that resolution passed on 27.11.1995 is not binding on him.
8. In a case where the trial Court has exercised its judicial discretion to reject the application for amendment finding such amendment is not necessary, this Court would not interfere with the exercise of judicial discretion by the trial Court in exercise of power under Article 227 of the Constitution of India.

¹ (2015) 4 SCC 182

² AIR 2009 SC 1433

9. Applying its earlier decision in **Surya Dev Rai v. Ram Chander Rai**³ and **Shalini Shyam Shetty v. Rajendra Shankar Patil**⁴, the Supreme Court in **Sameer Suresh Gupta through PA Holder v. Rahul Kumar Agarwal**⁵ 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 appropriate cases where the judicial conscience of the

³ (2003) 6 SCC 675

⁴ (2010) 8 SCC 329

⁵ (2013) 9 SCC 374

High Court dictates it to act lest a gross failure of justice or grave injustice should occasion.

10. Having heard learned counsel for the parties and having perused the impugned order, this Court does not find any such illegality or perversity committed by the Court below which would warrant exercise of jurisdiction under Article 227 of the Constitution of India.

11. Accordingly, the writ petition filed under Article 227 of the Constitution of India deserves to be and is hereby dismissed. However, the trial Court is directed to conclude the trial within a period of three months from the date of receipt of certified copy of this order and report of compliance of this order be sent to Registry of this Court after three months without fail. No cost(s).

Sd/-

(Sanjay K Agrawal)
Judge

B/-