

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.584 of 2016**

Sohanlal Meshram, aged about years, S/o Late Shri Parasram Meshram, (Retired), Inspector, Water Resources Department, Chowki, At Present R/o Kiilapar, Near Hanuman Mandir, Ward No.3, Dongargaon, Tahsil and Post Dongargaon, Distt.Rajnandgaon

---- Petitioner

Versus

1. Executive Engineer, Water Resources Department, Rajnandgaon (CG)
2. Superintendent Engineer, Shivnath Mandal, Water Recourses Department, Durg CG
3. Chief Engineer, Mahanadi Godavari Kachar Besin, Near Bhagat Singh Chowk, Raipur
4. State of Chhattisgarh, through Collector, Rajnandgaon

--- Respondents

 For Petitioner : Mr.Parag Kotecha, Advocate
 For Respondents : Mr.Ashish Surana, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****26/10/2016**

1. Application for amendment filed by the petitioner/plaintiff after commencement of the trial was rejected by the trial Court by its order impugned.
2. Against which, this writ petition has been filed.
3. Mr.Parag Kotecha, learned counsel appearing for the petitioner/plaintiff would submit that the petitioner only wanted

to add that he is a member of Scheduled Caste and as such, the amendment is formal in nature. He relied upon a decision of the Supreme Court in the matter of **Mahila Ramkali Devi & others vs. Nandram (D) thr. Lrs. & others**¹.

4. On the other hand, Mr. Ashish Surana, learned Panel Lawyer appearing for the respondents/State, would submit that trial has already been commenced and in the application filed by the petitioner it has not been shown that in spite of due diligence earlier such application has not been moved. He would rely upon the judgment of the Supreme Court in the matter of **Vidyabai and others Vs. Padmalatha and another**² and would submit that amendment cannot be allowed and it has rightly been rejected by the trial Court.

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

6. 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 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

¹ 2015 AIR SCW 3187

² (2009) 2 SCC 409

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.”

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

8. The aforesaid proviso came into consideration before the Supreme Court in **Vidyabai** case (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."

9. The writ petitioner 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 the trial as the application for amendment filed by the petitioner is blissfully

silent. Thus, the petitioner has failed to establish the fact that in spite of due diligence he could not move an application for amendment before the commencement of the trial.

10. Since the proviso to Order 6 Rule 17 CPC is mandatory as held in the matter of **Vidyabai** (supra) and the petitioner has failed to establish the same, the trial Court has rightly rejected the application, in which I do not find any error of jurisdiction.

11. The writ petition deserves to be and is hereby dismissed.
No order as to cost(s).

Sd/-

(Sanjay K Agrawal)
Judge

B/-