

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.588 of 2016

1. Smt. Geeta Devi Agrawal, aged about 70 years, Wd/o Ramdayal Agrawal,
2. Harivallabh Agrawal, aged about 45 years, S/o Shri Ramdayal Agrawal,

Note: Both are R/o House No.323-A, Maharshi Dayanand Marg, Sundar Nagar, Raipur, Tahsil and Distt. Raipur (C.G.)

(Defdts. 1&2)
---- Petitioners

Versus

1. Mahendra Kumar Sonkar, S/o Shri Manaram Sonkar, aged about 42 years,
2. Shailendra Kumar Sonkar, S/o Shri Manaram Sonkar, aged about 40 years,
3. Satyendra Sonkar, aged about 39 years, S/o Shri Manaram Sonkar,

Note: All the Respondents No.1 to 3 above are R/o Lohar Chowk, Sonkarpara, Purani Basti, Raipur (C.G.)

(Plaintiffs No.1 to 3)

4. The Executive Engineer, C.G. Electricity Board, Dangniya, Raipur (C.G.)

(Defendant No.3)

5. Chief Engineer (Raipur Region), C.G. Rajya Vidyut Vitran Co., Gudhiyari, Raipur (C.G.)

(Defendant No.4)
---- Respondents

For Petitioners: Mr. R.N. Pusty, Advocate.
For Respondents No.1 to 3: Mr. P.P. Sahu, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

09/11/2016

1. The plaintiffs filed suit for declaration and permanent injunction on 11-7-2011 in which written statement was filed on 4-2-2012 by the defendants and issues were framed on 13-2-2012, and affidavit under Order 18 Rule 4 of the CPC was filed on 4-10-2012. The defendants have now preferred an application under Order 6 Rule 17 read with Section 151 of the CPC for amendment on 5-2-2016 and application for filing documents was also filed. The trial Court by its impugned order rejected the applications on the ground of having no merit on the said applications against which this writ petition has been preferred.
2. Mr. R.N. Pusty, learned counsel for the petitioners / defendants No.1 and 2, would submit that the amendment is necessary and based on subsequent events therefore it ought to have been allowed, whereas, Mr. P.P. Sahu, learned counsel for the plaintiffs / respondents No.1 to 3, would submit that trial had already commenced by filing application under Order 18 Rule 4 of the CPC as such, the trial Court has rightly rejected the application for amendment.
3. I have heard learned counsel for the parties and perused the order impugned and also gone through the documents filed along with the petition with utmost circumspection.
4. Admittedly, trial had commenced, as affidavit under Order 18 Rule 4 of the CPC has been filed and the proviso to Order 6 Rule 17 of the CPC has become applicable. The application for

amendment is blissfully silent as to why the application for amendment could not be moved earlier. The document is of 27-7-2015 but the application for amendment was filed on 5-2-2016.

5. The Supreme Court in the matter of **Vidyabai and others v. Padmalatha and another**¹ has clearly held that proviso to Order 6 Rule 17 of the CPC is mandatory in nature. In fact, the application under Order 6 Rule 17 of the CPC is blissfully silent with regard to the proviso appended to Order 6 Rule 17 of the CPC, otherwise, the amendment application could have been been in time and delay in filing the application is unexplained, as such, there is no error of jurisdiction in the order impugned. The application for additional document is also unnecessary and only to protect the trial, it has been filed.
6. The application for taking additional documents on record filed under Section 151 of the CPC is allowed subject to payment of cost of Rs.5,000/- to the plaintiffs payable within 15 days from today, as the documents are necessary for just and proper disposal of the suit.
7. For the foregoing reasons, the writ petition is partly allowed leaving the parties to bear their own cost(s). However, the trial Court is directed to conclude the trial within six months from the date of receipt of a copy of this order.

Sd/-
(Sanjay K. Agrawal)
Judge