

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1605 of 2016**

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Abdul Samad Khan

.... Appellant/s

Versus

Serajuddin Khan & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Yogendra Prasad Sinha

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**

ORAL ORDER

2 16-01-2017

Heard the learned counsel for the petitioner.

Perused the impugned order dated 17.11.2016 passed by Sub Judge 11, Gopalganj in Title Suit No.80 of 2015 whereby the learned Court below has rejected the amendment application filed by the plaintiff-petitioner at the stage of argument of the suit.

The Hon'ble Supreme Court in the case of **Rajkumar Gurawara vs. S.K.Sarwagi and Company Private Limited and Another, (2008) 14 Supreme Court Cases 364** has held that "however, in case of amendments after the commencement of trial, as in the present case particularly after completion of the evidence, the question of prejudice to the opposite party may arise and in such an event, it is incumbent on the part of the court to satisfy the conditions prescribed in the proviso to Order VI Rule 17 C.P.C. If the parties to the proceeding are able to satisfy the court that in spite of due diligence they could not raise the issue



before the commencement of trial and the court is satisfied with their explanation, amendment can be allowed even after commencement of the trial and not otherwise.”

In the present case, admittedly, no explanation has been given by the petitioner regarding proviso to order VI Rule 17 C.P.C. and the court below finding no explanation has held that since the due diligence has not been shown by the plaintiff, has rejected the amendment application.

In such circumstances, I do not find any reason to interfere with the impugned order. Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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