

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.624 of 2016

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1. Rajesh Kumar Son of Laxman Prasad resident of Mohalla - Amgola Pankhatoli,
P.O. Ramna, P.S. Kazimohammadpur, District - Muzaffarpur Appellant/s

Versus

1. Ram Shresth Mahto Son of Soman Mahto resident of village - Sakari Goghani
Tola, P.O. Patharsara District Muzaffarpur at Present resident of village - Koetsa
Chauk, P.O. Sakari Chandanpur, P.S. Piar, District - Muzaffarpur Respondent/s

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Appearance :

For the Appellant/s : Mr. Md. Anis Akhtar
For the Respondent/s : Mr. Satya Narain Mishra

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 28-11-2017

Heard Sri Anis Akhtar, the learned counsel for the petitioner
and Mr. Satya Narain Mishra, the learned counsel for the respondent.

The petitioner has filed this Civil Misc. petition against the
order dated 13.08.2015 passed by learned Sub-Judge, Muzaffarpur in
Money Suit No. 01 of 2013 by which amendment petition of petitioner has
been dismissed.

The learned counsel for the petitioner submits that the
amendment petition is formal and explanatory in nature as in para 5 of the
plaint the petitioner sought amendment that in line 2 and 3 Muzaffarpur be
corrected as Muraul and in line no.3 Muraul be corrected as Muzaffarpur. It
is further submitted that petitioner sought amendment by deleting words
after line No.12 in line No.13 at page 5 of para 6 after the word granted and
substituting the words “and in line thereof the defendant granted money
receipt of Rs. 3 Lakhs (3,00,000/-) on 30.12.2011. It is submitted that the
defendant in Feb. 2012 delivered a cheque of Rs. 3 Lakhs vide cheque No.
486234 dated 01.02.2012 of State Bank of India, Red Cross Building,
Muzaffarpur” and the amendment is purely explanatory in nature and if the
amendment is allowed the same would not change the nature of the suit.



On the other hand, the learned counsel for the respondent submits that by seeking amendment in para 6 the plaintiff wanted insertion of new facts. The learned counsel for the respondent placed reliance on the judgement of the Apex Court reported in **AIR 2013 SC 3188 (Mashyak Grihnirman Sahkari Samiti v. Usman Habib Dhuka & Ors)** but I do not find any substance in the submission of the learned counsel for the respondent as on perusal of the amendment petition as well as of the plaint it appears that substitution of word Muzaffarpur in place of Muraul and Muraul in place of Muzaffarpur is formal in nature. The plaintiff has stated in para 6 of the plaint about the dates and events on which he gave money to the defendant and the amendment sought for is explanatory in nature. It has nowhere come that plaintiff did not state the facts that by seeking amendment he is endorsing new facts, which was within the knowledge of the plaintiff at the time of filing of the suit. Therefore, the judgement relied on by the learned counsel for the respondent is of no help to his submission.

Having considered the facts aforesaid, I find that the learned Sub-Judge has erred in rejecting the amendment petition of the plaintiff. Accordingly, this Civil Misc. petition is allowed and the order dated 13.08.2005 passed in Money Suit No. 1/2013 is set aside.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04.12.2017
Transmission Date	N.A.

