

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.596 of 2017**

Dhankunwar Bai D/o Sukhram Sahu, Aged About 42 Years R/o Gendpur,
Police Station & Tahsil Sahas Lohara, District Kabirdham Chhattisgarh.
Civil & Revenue District Kabirdham Chhattisgarh. ---- **Petitioner**

Versus

1. Tokendra Sahu S/o Sukhram Sahu, Aged About 50 Years R/o Daanighatoli, Police Station & Tahsil Sahas Lohara, District Kabirdham Chhattisgarh.
2. State Of Chhattisgarh, Through The Collector, Kabirdham, District Kabirdham Chhattisgarh

--- Respondents

For Petitioner : Mr. Krishna Kumar Dewangan, Advocate
For State : Mr. Gary Mukhopadhyay, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****25/08/2017**

(1) The plaintiff/respondent No.1 herein filed a civil suit for declaration, partition and permanent injunction against the petitioner/defendant No.1 herein before the trial Court, but during the pendency of the suit, the petitioner/defendant No.1 has moved an application under Order 6 Rule 17 of Code of Civil Procedure, 1908 (for short, 'the CPC') for amendment in the plaint. The trial Court by its impugned order dated 13.07.2017 has rejected the petitioner/defendant's finding no sufficient ground to allow the application and further finding that there is no compliance of proviso of Order 6 Rule 17 of CPC, against which this writ petition under Article 227 of the Constitution of

India has been preferred by the petitioner/defendant No.1.

(2) Learned counsel appearing for the petitioner/defendant No.1 would submit that the proposed amendment is necessary for just and proper disposal of the suit. He would further submit that the proposed amendment will not change the nature of suit, it is formal in nature, therefore it is liable to be allowed.

(3) Mr. Gary Mukhopadhyay, learned counsel appearing for the State would support the impugned order and submit that the trial has already been commenced and the application filed by the petitioner/defendant No.1 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 & others Vs. Padmalatha & another¹** and would submit that amendment cannot be allowed and it has rightly been rejected by the trial Court.

(4) I have heard learned counsel for the parties and perused the impugned order with utmost circumspection.

(5) 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.

(6) The aforesaid proviso came into consideration before the Supreme Court in **Vidyabai** case (supra) has been held that it is

¹ (2009) 2 SCC 409

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.

(7) 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.

(8) Since the proviso to Order 6 Rule 17 of 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. Likewise, I do not find any good ground to set-aside the impugned order.

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

SD/-

(Sanjay K Agrawal)
Judge