

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.610 of 2017**

Budhram son of Shri Shivilal Kashyap, aged about 60 years, resident of Village Maldakala, Tahsil Jaijaipur, District Janjgir-Champa (CG).

---- **Petitioner****Versus**

1. Govind son of Shri Shivilal Kashyap, aged about 60 years, resident of Village Maldakala, Tahsil Jaijaipur, District Janjgir-Champa (CG).
2. State of Chhattisgarh, through the Collector, District Janjgir-Champa (CG).

--- **Respondents**

 For Petitioner : Mr. D.N. Prajapati, Advocate
 For State : Mr. Aditya Sharma, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****30/08/2017**

(1) The petitioner/plaintiff' application under Order 6 Rule 17 of CPC for amendment in the plaint before the trial Court and the same was rejected by the trial court by its impugned order dated 27.07.2017 on the ground that the evidence of both the parties have already been closed and 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/plaintiff herein.

(2) Learned counsel appearing for the petitioner/plaintiff 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. Aditya Sharma, learned counsel appearing for the State would support the impugned order and oppose the submission made by learned counsel for the petitioner.

(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 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

L/-