

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 848 of 2017**

Jageshwer Ram S/o Late Sukra Ram, Aged About 45 Years R/o Village Devi
Dadgaon, P. O. Gholeng, Tahsil And District Jashpur, Chhattisgarh.

---- Petitioner

Versus

Ratnu Ram S/o Late Kanhu Ram, Aged About 61 Years R/o Village Jario, P.
O., Tehsil, Police Station Manora, District Jashpur, Chhattisgarh.

---- Respondent

For Petitioner	:	Mr. I. Lakra, Advocate.
For Respondent	:	None.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****17/11/17**

1. By the impugned order dated 23.10.2017, the trial Court has rejected the application filed by the petitioner under Order 6 Rule 17 of the C.P.C. for amendment in the plaint. Being aggrieved against which this writ petition under Article 227 of the Constitution has been preferred by the petitioner.

2. Learned counsel appearing on behalf of the petitioner would submit that the impugned order is unsustainable and bad in law and is liable to be set aside.

3. I have heard learned counsel for the petitioner.

4. The suit was filed on 03.11.2016 and the application for amendment in the plaint was filed on 14.09.2017 whereas the plaintiff's evidence has already been closed and there is no compliance with proviso to Order 6 Rule 17 of the C.P.C. In the decision rendered by Hon'ble Supreme Court in the matter of **Vidyabai and others v. Padmalatha and another**¹, the Supreme

¹ (2009) 2 SCC 409

Court held as under :-

“10. By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), Parliament inter alia inserted a proviso to Order 6 rule 17 of the Code, which reads as under :

“Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

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 viz. It 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.”

The Supreme Court has clearly held that proviso to Order 6 rule 17 of the C.P.C. is mandatory and the petitioner has not taken care of to make statement complying with the proviso to Order 6 Rule 17 of the C.P.C.

5. I do not find any merit in the writ petition. Accordingly, the writ petition deserves to be and is hereby dismissed. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge