

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 93 of 2017

Smt. Parvati Sahu W/o Nandkumar Sahu, Aged About 41 Years Caste Teli, R/o Block No. 32, Qtr. No. H. Risali Sector, Bhilai, Tahsil And District Durg (Chhattisgarh)

---- Petitioner

Versus

1. Dugeshwar Sahu S/o Shri Umend Sahu, Aged About 31 Years Caste Teli, R/o Village Heerapur, Tahsil Balod, District Balod (Chhattisgarh)
2. The State Of Chhattisgarh, Through : The Collector, Balod, District Balod Chhattisgarh.

---- Respondents

For Petitioner	:	Shri P.P. Sahu, Advocate
For Respondent No.1	:	None appears though served
For State/Respondent No.2	:	Shri Aditya Sharma, Panel Lawyer

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

10/03/2017

1. This petition under Article 227 of the Constitution of India is preferred against order dated 12th January, 2017 by which, learned Court below has rejected petitioner's application for amendment in the plaint.
2. Learned counsel for the petitioner submits that under the Law, there is no bar to filing of an amendment application at any stage of the proceedings. He submits that the suit has been filed by the petitioner/plaintiff seeking a decree of specific performance of contract. He submits that during pendency of suit, a fact which was not within the knowledge of the petitioner but is extremely relevant for establishing a case against defendant came to the notice of the petitioner that the defendant was under a threat of coercive steps of attachment and sale of his property on account of non-payment of loan liability. He submits that

otherwise in the plaint as well in the agreement, this fact has already been stated that the defendant was in a need of money and, therefore, entire amount of sale consideration was paid by the petitioner to the defendant at the time of entering into an agreement to sell. Therefore, the nature of suit will not be altered. It is also submitted that at this stage, when the evidence of the plaintiff has not been taken, no prejudice would be caused to other party nor allowing the amendment will have the effect of protracting the trial.

3. Despite notice, none has appeared for respondent No.1. The State is only a formal party.
4. Considering the submission made by learned counsel for the petitioner, it is found that the suit is at nascent stage. The suit is of 2016. The averments which are sought to be added by way of amendment in the plaint cannot be said to be contain those facts which were within the knowledge of plaintiff/petitioner and yet the plaintiff did not choose to include it in the pleading at the time of filing of the suit. Moreover, if amendment, at this stage, is allowed, it will neither protract the trial nor cause any prejudice to the parties because the defendant would be entitled to make consequential amendments in the written statement in rebuttal of the proposed amended pleadings. On the other hand, if the plaintiff is not permitted to make amendment in the plaint, the plaintiff may have impediment in leading appropriate evidence to prove the fact that defendant was in a dire need of money on the date when agreement to sell was executed. Therefore, interest of justice also demands that amendment application may be allowed. Rejection of the application has resulted in miscarriage of justice, therefore, interference by the Court in exercise of its supervisory jurisdiction has become imperative.
5. In the result, the petition is allowed, impugned order is quashed. The petitioner's application for amendment is allowed. The defendant, however, shall have the right to file consequential rebuttal pleadings by way of additional written statement.

Sd/-
(Manindra Mohan Shrivastava)
Judge