

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 576 of 2017**

Smt. Bhagwati Bai, W/o. Toran Lal Sahu, aged about 53 years,
R/o. Village Sankra, Post Kapsada, Tahsil Dhamdha, Distirct Durg
(C.G.)

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

1. Baldev Sahu, S/o. Bisauha Sahu, aged about 35 years,
2. Punit Sahu @ Baleshwar, S/o. Bisauha Sahu, aged about 40 years,
3. Bisauha Sahu, aged about 60 years,

Respondents No. 1 to 3 are R/o. Village Dodekala, Tahsil &
District Raipur (C.G.)

4. State of Chhattisgarh, through Collector, Durg, Tahsil & District
Durg (C.G.)

---- **Respondents**

For Petitioner	: Shri Manoj Paranjpe, Advocate.
For State	: Shri Gary Mukhopadhyaya, Dy. Govt. Advocate.

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

(1) Learned counsel for the petitioners would submit that impugned order dated 29.04.2017 passed by the trial Court rejecting the application for amendment on the ground of delay is unsustainable and bad in law as the trial has not commenced and, therefore, impugned order is liable to be dismissed.

(2) I have heard learned counsel appearing for the petitioner and perused the order impugned with utmost circumspection.

(3) It appears that the trial Court is mainly impressed with the delay and rejected the application and has not considered the application for amendment on merits, whether such amendment is just and proper for disposal of the suit or not and whether it will change the nature of the suit or not *whereas* it ought to have been considered whether amendment is just and necessary for proper disposal of the suit, therefore, the impugned order dated 29.04.2017 is set aside. The matter is remitted back to trial Court for fresh consideration without being influenced by the impugned order. Defendants will be entitled for a cost of Rs.4,000/-.

(4) Accordingly, the writ petition is allowed to the extent indicated hereinabove. However, the respondents are at liberty to file application for modification, if aggrieved by the said order.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-