

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.586 of 2017**

Ankit Bhalla, son of Shri Chandra Prakash Bhalla, aged about 29 years,
Occupation Business, resident of 3/1 S.F. Saket No.3, New Delhi.

---- Petitioner

Versus

Chandi Choudhari, daughter of M.P. Choudhari, aged about 49 years,
Occupation Nil, resident of 32 Kirodimal Colony, Raigarh, Tahsil and
District Raigarh (CG).

--- Respondent

For Petitioner : Ms. Sharmila Singhai, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****23/08/2017**

(1) The respondent/plaintiff herein filed suit for recovery of the subject amount, but during the pendency of the suit, on 06.02.2017 the petitioner/defendant has moved an application under Order 6 Rule 17 of CPC for amendment in the written statement after commencement of the trial. The trial Court by its impugned order dated 05.07.2017 has declined to allow the defendant's application on the ground that the trial has already been commenced and the proposed amendment is not necessary for just and proper disposal of the suit, against which this writ petition under Article 227 of the Constitution of India has been preferred by the petitioner/defendant.

(2) Learned counsel appearing for the petitioner/defendant would submit that the proposed amendment is necessary for

just and proper disposal of the suit which came to the notice of the petitioner/defendant at the time of preparation of the case through his counsel. 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) I have heard learned counsel for the petitioner and perused the impugned order with utmost circumspection.

(4) Undisputedly, the trial has already been commenced by filing an affidavit under Order 18 Rule 4 of CPC by the respondent/plaintiff and thereafter, the application under Order 6 Rule 17 of CPC was filed by the petitioner/defendant for seeking leave to amendment in the written statement which has rightly rejected.

(5) I have heard learned counsel appearing for the petitioner and perused the order impugned.

(6) 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.

(7) The aforesaid proviso came into consideration before the Supreme Court in **Vidyabai and others Vs. Padmalatha and another**¹ and it has been held that it is couched in a mandatory

¹ (2009) 2 SCC 409

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.

(8) 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.

(9) 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.

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

SD/-

(Sanjay K Agrawal)
Judge

L/-