

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.642 of 2017**

1. Ramesh Chand, S/o Shri Madanlal Rungta, aged about 65 years, R/o Ramadin Marg, Tahsil and District Rajnandgaon (CG).
2. Ramawtar, S/o Shri Madanlal Rungta, aged about 60 years, R/o Ramadin Marg, Tahsil and District Rajnandgaon (CG).
3. Mahendra Kumar, S/o Shri Madanlal Rungta, aged about 55 years, R/o Ramadin Marg, Tahsil and District Rajnandgaon (CG).
4. Rukmani Devi, W/o Shri Madanlal Rungta, aged about 80 years, R/o Ramadin Marg, Tahsil and District Rajnandgaon (CG).

---- Petitioners**Versus**

1. Shailendra Kumar, S/o Madanlal Rungta, aged about 49 years, R/o Shukla Complex Ramadin Marg, Rajnandgaon, Tahsil and District Rajnandgaon (CG).
2. Pankaj Kumar, S/o Shri Kamal Narayan Rungta, S/o Shri Kamal Narayan Rungta, aged about 35 years, R/o Ramadin Marg, Tahsil and District Rajnandgaon, Present Address Ganj Chowk Durg,
3. State of Chhattisgarh, through Collector, Rajnandgaon (CG).

--- Respondents

For Petitioners	:	Mr. Aditya Bhardwaj, Advocate
For State	:	Mr. Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****07/09/2017**

(1) The petitioners/defendants filed an application under Order 6 Rule 17 of CPC for amendment before the trial Court and the same was rejected by the trial court by its impugned order dated 13.07.2013 on the ground that the plaintiff's evidence has already been closed and new ground is sought to be raised 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 petitioners/defendants herein.

(2) Learned counsel appearing for the petitioners/defendants 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. Shashank Thakur, 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 petitioners did not aver in their application for amendment that in spite of due diligence, they could not have raised the matter before the commencement of the trial as the application for amendment filed by the petitioners is blissfully silent. Thus, the petitioners have failed to establish the fact that in spite of due diligence they 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 petitioners have 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) Accordingly, the writ petition deserves to be and is hereby dismissed. No order as to cost(s).

Sd/-

(Sanjay K Agrawal)
Judge

L/-