

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.915 of 2014**

Ralas Hotel Pvt.Ltd., Raipur, A Private Company Incorporated and Constituted under the Indian Companies Act, 1956, having its office at 15/480, Civil Lines Raipur Through Its Director Shri Manish Raj Singhania S/o Shri Rajkamal Singhania Aged About 40 years, R/o 15/480, Civil Lines Raipur Police Station Golbazar, Raipur C.G.

---- Petitioner

Versus

1. Smt.Indra Devi Indrani W/o Mohan Lal Nachrani Aged About 72 Years R/o P.S. -4, Panchseel Nagar Raipur C.G.
2. Anil Kumar Nachrani S/o Mohanlal Nachrani Aged About 46 Years R/o P.S. -4, Panchseel Nagar Raipur C.G.
3. State Of Chhattisgarh Through The Collector, Raipur District Raipur C.G.

--- Respondents

 For Petitioner : Mr. Sumesh Bajaj, Advocate
 For Respondent No.1 : Mr. B.P. Sharma, Advocate
 For Respondent No.3 : Mr. Aditya Sharma, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****18/09/2017**

1. The petitioner/plaintiff's application under Order 6 Rule 17 of CPC has been rejected by the trial Court by its impugned order dated 15.09.2014, against which this writ petition under Article 227 of the Constitution of India has been filed.
2. Learned counsel appearing for the petitioner/plaintiff would submit that some typographical error in the plaint, which deserves to be corrected by granting amendment.
3. Learned counsel appearing for the respondent No.1 would

submit that the proviso of Order 6 Rule 17 of CPC has not been complied with. He would further submit that trial has already been commenced and the application filed by the petitioner/plaintiff, which has highly belated as the suit was filed on 24.04.2000. He would rely upon the judgment of the Supreme Court in the matter of **Vidyabai and others Vs. Padmalatha and another**¹ and would submit that amendment cannot be allowed and it has rightly been rejected by the trial Court.

4. I have heard learned counsel appearing for the parties and perused the order impugned.

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) and it 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.

¹ (2009) 2 SCC 409

7. 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.

8. 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.

9. Consequently, the writ petition deserves to be and is hereby dismissed. No order as to cost(s).

Sd/-

(Sanjay K Agrawal)
Judge

L/-