

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 423 of 2018

1. Smt. Saira Bano Wd/o Late Mohammad Ismail, Aged About 77 Years,
2. Mohammad Shafiq, S/o Late Mohammad Siddhiqui, Aged About 48 Years,
3. Mohammad Ishak, S/o Late Mohammad Ismail, Aged About 50 Years,
4. Mohammad Raza, S/o Late Mohammad Ismail, Aged About 43 Years,
5. Mohammad Ahmed, S/o Late Mohammad Ismail, Aged About 39 Years,

All R/o Motor Stand Ward, Dhamtari, Tehsil And District Dhamtari Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh Through Collector, Dhamtari, Tahsil And District Dhamtari Chhattisgarh.
2. Tehsildar, Dhamtari (Revenue), Tahsil And District Dhamtari Chhattisgarh.
3. Tehsildar, (Nazul) Dhamtari, Tahsil And District Dhamtari Chhattisgarh.
4. Commissioner, Municipal Corporation Dhamtari, Tahsil And District Dhamtari Chhattisgarh.
5. Mayor, Municipal Corporation Dhamtari, Tahsil And District Dhamtari Chhattisgarh.
6. Gajraj Jain S/o Late Shri Manlal Jain, Aged About 72 Years R/o Behind Adarsh Bal - Mandir, Motor Stand Dhamtari, Tahsil And District Dhamtari Chhattisgarh.
7. Bhartiya Janta Party, Through Its Office Bearer District Office, Dhamtari Chhattisgarh.

---- Respondents

For petitioners - Shri Kshitiz Sharma, Advocate.
For State-Shri Sangarsh Pandey, Dy.G.A.
For respondent No.4 -Shri Sudeep Agrawal, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

9/05/2018

Heard.

1. Instant petition is against the order dated 7/04/2018 whereby an application under Order 6 Rule 17 of CPC was disallowed and in the same breath the right to lead evidence was closed.
2. Learned counsel for the petitioners/plaintiffs filed a suit for declaration and permanent injunction in the year 2008 that certain property which was granted to them by the State are nazul and they are lessee of the subject plot. It is contended that during pendency of suit, on 2/01/2017 respondents No.4 & 5 has demolished part of the property i.e. superstructure of two rooms situated over the land, therefore there was no occasion before that date to move any amendment petition. It is stated even when the case was fixed for evidence, the affidavit so filed was much before the date of demolition of 2/01/2017. He therefore submits that amendment unless and until it is allowed about subsequent act of demolition, no evidence could be led and under the circumstances amendment so proposed would not be covered by the proviso clause Order 6 Rule 17 of CPC. It is stated that the petitioner therefore may be allowed to lead evidence and the amendment so proposed claiming damages of Rs.50,000/- may be allowed.
3. Learned counsel for the respondents opposes the same.
4. Perused the record. Perusal of the order sheet shows that case is pending from 2008. Fact would show that on the previous occasions adjournment was sought for. Record further shows that affidavit of the plaintiff was filed on 7/04/2015 and record would show that affidavit of Bisan Lal Yadu was filed on 8/10/2015. Statement has been made at the bar that few of the plaintiffs have been examined and cross examined and

one statement of Bisan Lal Yadu whose affidavit was filed under Order 18 Rule 4 of CPC remained to be cross examined. Perusal of the amendment would show that it is stated that in the amendment it was prayed that during pendency of the suit on 2/01/2017 Municipal Corporation had demolished two rooms by JCB which had caused loss of Rs.50,000/- to the plaintiffs. Therefore, prima facie it reflects that after evidence started and the affidavit of the witness were placed on record, the alleged demolition was carried out on 2/01/2017. Therefore, it can be prima facie presumed that the act complained and committed was during the course of pendency of the suit. Therefore irrespective of the fact about authenticity whether such pleading is correct or not, if pleading is not on record which is on the basis of subsequent event, naturally plaintiffs would be debarred to lead any evidence.

5. In the result, taking into facts of this case proposed amendment under Order 6 Rule 17 CPC is allowed. Necessary amendment be carried out by the next date. In the meanwhile, it is further directed that under the facts of this case plaintiff shall be allowed to lead further evidence in respect of damages so claimed. On the next date of hearing plaintiff shall produce all his witness and the trial court shall continue and conclude the case as early as possible.

6. With such observation, the petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE