

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 728 of 2018**

1. Smt. Vimla Sharma, Wife of Shri Manoj Sharma, aged 39 years.
2. Smt. Usha Sharma, wife of Dinesh Sharma, aged 52 years.
3. Vinod Kumar Sharma, S/o Shri Rajendra, aged 33 years.
4. Sandeep Sharma, S/o Shri Kelashchand Sharma, aged 34 years.

All resident of Burapara, Raipur, Tehsil and District Raipur (C.G.)

..... Plaintiffs

---- Petitioners

Versus

1. Joint Director, Nagar Tatha Gram Nivesh, Raipur, District Office, Raipur (C.G.)
2. State of Chhattisgarh through Collector Raipur, District Raipur (C.G.)

---- Respondents

For Petitioners	: Shri B.P. Sharma & Shri M.N. Thakur, Advocate.
For State	: Shri Arun Sao, Dy. Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

21/08/2018

(1) Instant petition, filed under Article 227 of Constitution of India calls in question the legality and propriety of order dated 06.08.2018, passed by 4th Civil Judge, Class -II, Raipur, whereby the application filed by the petitioners/plaintiffs under Order 6 Rule 17 of CPC for amendment after closure of evidence of both the parties has been dismissed.

(2) Learned counsel appearing for the petitioners would submit that it is a

bonafide technical error, therefore, it may be allowed to be corrected. He relied upon the judgment of the Supreme Court in the matters of **Puran Ram Vs. Bhaguram and another**¹ & **Jai Jai Ram Manohar Lal Vs. National Building Material Supply, Gurgaon**² in support of his submission.

(3) I have heard learned counsel for the petitioner.

(4) The trial has already commenced and the evidence of both the parties have concluded, thereafter, an application has been filed by the petitioners/plaintiffs that too without showing any due diligence.

(5) Proviso to Order 6, Rule 17 of the CPC provides that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial and the said proviso has been held to be mandatory by the Supreme Court in the matter of **Vidyabai and others v. Padmalatha and another**³.

(6) The application for amendment filed by the petitioners/plaintiffs is blissfully silent as to why application for amendment was not filed before commencement of the trial except saying that during preparation of final hearing, the above defect was noticed.

(7) Indisputably, the application has been filed by the petitioners after commencement of trial. The petitioners have failed to assign plausible reason why in spite of due diligence amendment application could not be made before the commencement of trial.

1 (2008) 4 SCC 102

2 1969 (1) SCC 869

3 2009 (2) SCC 409

(8) In view of above, I do not find any illegality in the order impugned warranting interference of this court under Article 227 of the Constitution of India.

(9) Thus, the petition being devoid of merit is liable to be and is hereby dismissed. No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-