

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 810 of 2018**

1. Prakash Krishnani S/o Late Shri Parashram Krishnani Aged About 38 Years R/o Opposite Hotel Maan, Above Clinic of Dr. Sao, Baraipara, Durg, Luchuki Chowk, Durg, Tehsil And District Durg Chhattisgarh. (The Petitioners Are Legal Heirs Of Defendant And Impleaded In Civil Suit On 30.01.2014 Through In The Cause Title Of The Impugned Order Name Of Original Defendant Padmavati Is Not Deleted), District : Durg, Chhattisgarh
2. Dharma Krishnani @ Babu S/o Late Shri Parashram Krishnani Aged About 45 Years R/o Opposite Hotel Maan, Above Clinic of Dr. Sao, Baraipara, Durg, Luchuki Chowk, Durg, Tehsil And District Durg Chhattisgarh. (The Petitioners Are Legal Heirs Of Defendant And Impleaded In Civil Suit On 30.01.2014 Through In The Cause Title Of The Impugned Order Name Of Original Defendant Padmavati Is Not Deleted), District : Durg, Chhattisgarh
3. Amit Krishnani S/o Late Shri Parashram Krishnani Aged About 35 Years R/o Opposite Hotel Maan, Above Clinic of Dr. Sao, Baraipara, Durg, Luchuki Chowk, Durg, Tehsil And District Durg Chhattisgarh. (The Petitioners Are Legal Heirs Of Defendant And Impleaded In Civil Suit On 30.01.2014 Through In The Cause Title Of The Impugned Order Name Of Original Defendant Padmavati Is Not Deleted) (Defendants), District : Durg, Chhattisgarh

---- Petitioners / Defendants**Versus**

1. Anil Sao S/o Late Shri Nand Kishore, Aged About 62 Years R/o Motipara, Tehsil And District Durg, Chhattisgarh. (Plaintiff), District : Durg, Chhattisgarh[Plaintiff]
2. Smt. Sangeeta Sahela W/o Shri Mohandas Sahela Aged About 45 Years Resident Of Katora Talab, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh[Defendant No. 4]
3. Smt. Mohini Panjwani W/o Raj Kumar Pnawani, Aged About 50 Years R/o Barah Kholi, Gondia, Maharashtra., District : Gondiya, Maharashtra [Defendant No. 5]
4. Smt. Shanta Gajrani W/o Shri Bhagya Chandra Gajrani, Aged About 47 Years R/o Matatoli, Gondia, Maharashtra., District : Gondiya, Maharashtra[Defendant No. 6]
5. Smt. Aasha Meghani Wd/o Late Jagdish Meghani Aged About 55 Years R/o Anand Nagar, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh [Defendant No. 7]
6. Smt. Kriti Gwalani W/o Shri Sunil Gwalani Aged About 40 Years R/o Garoba Maidan, Nagpur, Maharashtra., District : Nagpur, Maharashtra.....[Defendant No. 8]

---- Respondents

For Petitioners : Mr. Ashish Surana, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

20/09/18

1 This writ petition is filed by the petitioners / defendants questioning the order passed by the trial Court whereby the application filed by the defendants under Order 6 Rule 17 of CPC for incorporating amendment has been rejected.

2. Learned counsel for the petitioners / defendants submits that the impugned order is unsustainable and bad in law as the amendment is absolutely necessary for just and proper disposal of the suit.

3. I have heard learned counsel for the petitioners and perused the impugned order.

4. The trial Court has clearly held that trial has commenced and the plaintiffs evidence has already been closed therefore, the application filed by the defendants under Order 6 Rule 17 of CPC for leave to amendment is not entertainable and there is no compliance with proviso to Order 6 Rule 17 of the C.P.C.

5. In the decision rendered by Hon'ble Supreme Court in the matter of **Vidyabai and others v. Padmalatha and another**¹, the Supreme Court held as under :-

“10. By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), Parliament inter alia inserted a proviso to Order 6 rule 17 of the Code, which reads as under :

“Provided 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.”

It is couched in a mandatory form. The court's jurisdiction

1 (2009) 2 SCC 409

to allow such an application is taken away unless the conditions precedent therefor are satisfied viz. It 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.”

The Supreme Court has clearly held that proviso to Order 6 rule 17 of the C.P.C. is mandatory and the petitioner has not taken care of to make statement complying with the proviso to Order 6 Rule 17 of the C.P.C.

6. Indisputably, the application has been filed by the petitioners / defendants after the commencement of trial and there is no compliance of proviso to Order 6 Rule 17 of CPC. 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.

7. As such, I do not find any merit in the writ petition. The writ petition deserves to be and is hereby dismissed. No order as to cost(s).

SD/-

(Sanjay K. Agrawal)
Judge