

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (227) No. 850 of 2018**

1. Hemlal Sahu S/o Late Shri Brijlal Sahu, aged about 65 years, R/o Near Deep Shrinkhla School, Sale Tax Colony, Khamhardih (Shankar Nagar), Raipur, Tahsil and District Raipur (C.G.)

---- **Petitioner****Versus**

1. Om Prakash Rathore, S/o Shri Nathuram Rathore, aged about 46 years, R/o Near Deep Shrinkhla School, Sale Tax Colony, Khamhardih (shankar Nagar), Raipur, Tahsil and District Raipur (C.G.)

---- **Respondent**

For Petitioner : Shri Sourabh Sharma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****04/10/18**

1. The petitioner / plaintiff's application seeking leave to amend the plaint has been rejected by the trial Court holding that proviso to Order 6 Rule 17 of CPC has not been complied with while filing the application for leave to amend the plaint against which this writ petition has been preferred.
2. Mr. Sharma, learned counsel appearing for the petitioner / plaintiff submits that the trial Court is absolutely unjustified in rejecting the application for amendment and, therefore, the impugned order be set aside.
3. I have heard learned counsel for the petitioner.
4. Admittedly, the trial has commenced upon filing the affidavit under Order 18 Rule 4 of CPC on 25.02.2009 and application for amendment has been filed on 06.07.2018.
5. In the decision rendered by Hon'ble Supreme Court in the matter of

Vidyabai and others v. Padmalatha and another¹, 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 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. Since the application for amendment was filed after the commencement of trial and there is no compliance of proviso to Order 6 Rule 17 of CPC and also it has not been stated as to why the application for amendment could not be produced before the commencement of trial as such, I do not find any merit in the writ petition.

7. Accordingly, the writ petition deserves to be and is hereby dismissed. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

1 (2009) 2 SCC 409