

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 924 of 2018**

1. Narendra Dewangan, S/o Mohan Dewangan, age about 37 years,
2. Ramesh Dewangan, S/o Ramratan Dewangan, age about 50 years,
3. Krishna Kumar Netam, S/o Baraturam Netam, age about 42 years,

All above petitioners are R/o Kondagaon, Tehsil & Distt. Kondagaon
(C.G.) Plaintiffs

---- Petitioners

Versus

1. Sukhnath, S/o Late Laikhan, aged about 68 years,
2. Shambhunath, S/o Late Laikhan, aged about 55 years,
3. Mohan, S/o Late Mangal Ram, aged about 75 years,
4. Premsingh, S/o Late Mangal Ram, aged about 63 years,

All above petitioners are R/o Kondagaon, Tehsil & District Kondagaon
(C.G.) Defendants

---- Respondents

For Petitioners	: Shri Manoj Paranjpe, Advocate.
For Respondents	: None.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

29/10/2018

(1) By the impugned order, plaintiffs' application for amending the written statement to the counter claim has been rejected by the trial Court finding non compliance of proviso to Order 6, Rule 17 of the CPC, against which instant writ petition has been filed questioning the same.

(2) Learned counsel appearing for the petitioners would submit that the trial Court is absolutely unjustified in rejecting the application for amendment, which is liable to be set aside. He placed reliance upon the judgment of the Supreme Court in the matter of **Mohinder Kumar Mehra Vs. Roop Rani Mehra and others**¹ in support of his submission.

(3) I have heard learned counsel appearing for the petitioner and perused the order impugned with utmost circumspection.

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

(5) The plaintiffs have already closed their evidence on 17.05.2018 and application for amendment has been filed after commencement of the trial and closure of plaintiffs' witnesses on 13.09.2018. The application filed by the petitioner for amendment is blissfully silent about the compliance of proviso to Order 6 Rule 17 of the CPC as to why such amendment could not be preferred before the commencement of trial in view judgment of the Supreme Court in the matter of **Vidyabai and others v. Padmalatha and another**².

(6) 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 (supra)**.

(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

1 (2018) 2 SCC 132

2 2009 (2) SCC 409

commencement of trial.

(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/-