

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(227) No. 980 of 2018**

1. Mahavir Chand Chajed, at present aged about 46 years, S/o Late Shri Mangilal Chajed, by Caste Jain, By Occupation Business, R/o Bharkapara, Post Mukam Rajnandgaon, Tahsil and District Rajnandgaon (C.G.)
---- **Petitioner/Plaintiff**

Versus

1. Gopal Daga, aged about 58 years, S/o Late Shri Agyaram Daga, by Caste Maheshwari, By Occupation Business, R/o Ramadhin Marg, Rajnandgaon, Post and Mukam, Tahsil and District Rajnandgaon (C.G.)
2. State of Chhattisgarh, through the Collector, District Rajnandgaon (C.G.)
---- **Respondents/Defendants**

For Petitioner	:	Mr. Parag Kotecha, Advocate.
For Respondent No. 1	:	None.
For Respondent No.2/State	:	Mr. Adhiraj Surana, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****26/11/18**

1. By the impugned order dated 08.10.2018 the petitioner/plaintiff's application filed under Order 6 Rule 17 CPC as well as application under Section 138 of the Indian Evidence Act has been rejected by the trial Court against which this writ petition has been preferred.

2. Learned counsel appearing for the petitioner/plaintiff submits that the trial Court is absolutely unjustified in rejecting the application for amendment and also the application under Section 138 of the Evidence Act read with Section 151 of CPC and therefore, the impugned order be set aside.

3. Per contra, learned counsel appearing for the State would support the impugned order.

4. I have heard learned counsel for the parties and perused the impugned order with utmost circumspection.

5. The trial Court has clearly recorded a finding that plaintiff's evidence has already been closed and the application for amendment filed did not disclose as to why the amendment could not have been moved prior to the commencement of the trial.

6. 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 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.

1 (2009) 2 SCC 409

7. In view of the above, the trial Court is absolutely justified in rejecting the said application. Even otherwise, the trial Court has considered the merits of the application for amendment, and after due consideration found no merit in said application which is neither perverse nor contrary to record. The trial Court has also held that plaintiff has not made out a case for recalling the witness already examined. As such, the finding recorded by the trial Court is based on material available on record. I do not find any perversity or illegality in the impugned order.

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

9. A copy of this order be sent to the trial Court directly as well as through the District Judge concerned for needful and compliance.

SD/-

(Sanjay K. Agrawal)
Judge