

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 972 of 2018**

1. Smt. Mala Dubey, W/o- Dr. T.N. Dubey, Aged about 52 years, resident of Gitanjali Nagar (Kashyap Colony), Street No. 6, Near Old Bus Stand, Bilaspur (C.G.)

[Defendant No.1 in the suit No. 19A/2012]

2. Dr. T.N. Dubey, S/o Chandrika Prasad, Aged about 56 years, resident of Gitanjali Nagar (Kashyap Colony), Street No. 6, Near Old Bus Stand, Bilaspur (C.G.)

[Defendant No. 2 in the suit No. 19A/2012]

3. Gopal Kachhi, S/o- Lakshman Kachhi, Aged about 44 years, resident of Chaddabaari, Mangla, Tehsil & District – Bilaspur (C.G.)

[Defendant No. 3 in the suit No. 19-A/201]

---- Petitioners

Versus

1. State of Chhattisgarh through Collector (Revenue), Bilaspur (C.G.)

[Defendant No. 4 in the Suit No. 19-A/2012; Formal Party herein]

2. Smt. Vidyadevi, W/o- Lakhanlal Saraf, Aged about 68 years, Resident of Kashyap Colony, Gitanjali Nagar, Bilaspur, Distt- Bilaspur (C.G.)

[Plaintiff in the Suit No. 19-A/2012]

---- Respondents

For Petitioners	: Shri Siddharath Dubey, Advocate.
For Respondent No.1/State	: Shri Ashish Surana, PL

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/11/2018

(1) Instant petition, filed under Article 227 of Constitution of India calls in question the legality and propriety of order dated 11.10.2018, passed by 4th Civil

Judge, Class -I, Bilaspur, whereby the application filed by the petitioners/defendants under Order 6 Rule 17 of CPC for amendment in the written statement has been dismissed.

(2) Learned counsel appearing for the petitioners would submit that the trial Court is absolutely unjustified in rejecting the application for amendment as the said amendments are necessary for just and relevant for proper disposal of the suit.

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

(4) The trial has already commenced; evidence of both the parties have concluded; and defendants' opportunity to lead evidence was closed by the trial Court on 20.02.2018, thereafter, an application for amendment has been filed by the petitioners/defendants 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**¹.

(6) The application for amendment filed by the petitioners/defendants is blissfully silent as to why application for amendment was not filed before commencement of the trial. 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 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.

(10) Copy of this order be sent to the trial Court through the concerned District Judge for compliance and needful.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-