

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 24 of 2015**

1. Manik Lal Bhuarya, S/o. Sitaram, Bhuarya Halba, aged about 40 years,
2. Sitaram Bhuarya, S/o. Sundru Bhuarya, aged about 67 years,

Both are resident of village Sahgaon, Tahsil Doundilohara, District Balod (C.G.)

----Petitioners/defendants

Versus

1. Smt. Mahangi Bai, Wd/o. Son Sai Halba, aged about 67 years,
2. Rohita, S/o. late Son Sai Halba, aged about 36 years,
3. Banita, S/o. Late Son Sai Halba, aged about 40 years,

all are resident of village Ganji, Tahsil Lohara, District Balod (C.G.)

4. Rohini Bai, daughter of late Son Sai Halba, aged about 35 years, resident of Parastarai, Tahsil Gunderdehi, District Balod (C.G.)

[Plaintiffs]

5. Gram Panchayat Jatadah, Through the Sarpanch, Gram Panchayat Jatadah, Tahsil Doundilohara, District Balod (C.G.)

[Defendant No.3]

---- Respondents

For Petitioners : Shri R.S. Patel, Advocate.
For Respondents No. 1 to 4 : Shri B.P. Singh, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

11/01/2019

(1) By the impugned order dated 17.12.2014, respondents No. 1 to 4/plaintiffs' application under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure has been allowed by the first appellate court without hearing the appeal on merits against which instant writ petition has been preferred.

(2) I have heard learned counsel appearing for the parties and perused the impugned order.

(3) It is well settled law that if application under Order 6 Rule 17 of the CPC for amendment in the pleading is filed in the pending first appeal under Section 96 of the Code of Civil Procedure, that has to be considered after hearing the appeal on merits.

(4) In **Khemchand Vs. Government of M.P. & others**¹ the High Court of Madhya Pradesh has held as under:-

“ 5. What has been said in relation to an application under Order 41, rule 27(1) applies equally to the disposal of an application for amendment of pleadings made at the appellate stage. The question whether a party should or should not be allowed to amend its pleadings at the appellate stage cannot in its very nature be decided unless the appeal is first heard on merits. The order of the Additional District Judge, Chhindwara, permitting the non-applicants Nos. 4 and 5 to produce additional evidence and to amend their written statement must, therefore, be set aside and the Additional District Judge must be directed to consider the said non-applicants' application under Order 41, rule 27 and the application for amendment of the written statement after hearing the appeal on merits.”

(5) In the instant case, application under Order 6 Rule 17 of the CPC has been filed in the pending appeal and it has been allowed by the first appellate Court without hearing the appeal on merits, which is impermissible in law, therefore, impugned order is liable to be and is hereby set aside. The First Appellate Court is directed to hear the application filed under Order 6 Rule 17 of the COC after hearing the appeal on merits and decide the application accordingly,

(6) Accordingly, the writ petition is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

1 1972 J LJ 482

