

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 450 of 2019

Vishnu Agrawal, S/o. Shri Laxminarayan Agrawal, Aged About 37 Years, Occupation Business, R/o. Sadar Bazar Bilaspur, Police Station City Kotwali, Tahsil Civil and Revenue District Bilaspur Chhattisgarh.

---- Petitioner

Versus

1. Gulam Ahmed, S/o. Late Gulam Mustfa, Aged About 66 Years, R/o. Khaparganj Bilaspur, Police Station City Kotwali, Tahsil, Civil and Revenue District Bilaspur Chhattisgarh.
2. Gulam Moinuddin, S/o, Late Gulam Mustfa, Aged About 60 Years
3. Nadeem Ahmed, S/o. Gulam Farukh, Aged About 40 Years
4. Naem Ahmed, S/o Gulam Farukh, Aged About 38 Years
5. Firoza Begam, W/o. Late Gulam Farukh, Aged About 57 Years
6. Niyaz Ahmed, S/o. Late Gulam Jilani, Aged About 40 Years
7. Sakila Bano, W/o. Late Gulam Jilani. Aged About 60 Years
8. Shahnaz Bano, D/o. Late Gulam Jilani, Aged About 37 Years,
No.2 to 8 all are R/o. In-front of C.M.D. College, Link Road Bilaspur, Tahsil Civil and Revenue District Bilaspur Chhattisgarh.

-----Respondents

For Petitioner : Mr. Ratnesh Kumar Agrawal, Advocate

For Respondents : Mr. Akhtar Hussain, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

07/02/2020

1. This petition has been brought under Article 227 of the Constitution of India being aggrieved by the order dated 13.05.2019, passed by the learned trial Court in Civil Suit No.465-A/2014, by dismissing the application filed by the petitioner/defendant under Order 6 Rule 17 of C.P.C.

2. It is submitted by the counsel for the petitioner that the petitioner had filed an application for amendment proposing to amend the written statement, which was consequential in nature, in reply to the amended pleading in the plaint in paragraph-6-A. The learned trial Court has made wrong appreciation that by allowing the amendment application, the nature of the defence is going to be changed. The learned trial Court has also mentioned other reasons by dismissing the application under Order 6 Rule 17 of C.P.C., which are not at all relevant and the only consideration should have been whether that pleading was essential for adjudication of the case or not. Therefore, the impugned order is erroneous and liable to be set-aside.
3. Counsel for the respondents concedes to the prayer made in the petition and submits that the application of the petitioner be allowed with cost.
4. I have heard the learned counsel for the parties and perused the documents placed on record.
5. On perusal of the copy of the application filed by the petitioner under Order 6 Rule 17 of C.P.C. before the learned trial Court, it is found that amendment proposed to be made was in reply to the amendment made by the respondents/plaintiffs in their plaint vide paragraph 6-A. Therefore, the amendment proposed by the petitioner was very clear and consequential in nature and there was no reason to consider that it could have changed the nature of defence. This observation of the learned trial Court appears to

be inappropriate. Hence, I am of this view that the amendment proposed by the petitioner/defendant should have been allowed by the trial Court. Accordingly, the petition is allowed. The application of the petitioner under Order 6 Rule 17 of C.P.C. filed before the trial Court is allowed and the learned trial Court is directed to permit the petitioner/defendant to incorporate the amendment in their written statement within a week.

6. Accordingly, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram