

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 633 of 2019

- Yoshodabai d/o Rajumal (Since dead) through legal representatives
- 1. Laalchand s/o Late Sheetal Das Dhameja aged about 65 years, resident of Chakradhar Nagar, Pakki Kholi, Sindhi Colony, Raigarh, Tahsil & District- Raigarh, C.G.
- 2. Bihari s/o Late Rewachand Rajput, aged about 46 years, resident of Kaserpara, Chakradhar Nagar, Raigarh, Tahsil & District- Raigarh, C.G.

---- Petitioners

Versus

1. Umashanker Gupta, s/o Siyaram Gupta (since dead) through legal representatives:-
 - 1A. Seema Devi Wd/o Umashanker Gupta, aged about 35 years, resident of Chakradhar Nagar, Sindhi Colony, Raigarh, Tahsil & District- Raigarh, C.G.(died and deleted as per the order of the Hon'ble Court).
 - 1B. Vikas Gupta, S/o Umashanker Gupta, presently aged about 35 years.
 - 1C. Vikrant Gupta S/o Late Umashanker Gupta, presently aged about 33 years.
 - 1D. Vijeta Gupta d/o Umashanker Gupta, presently aged about 31 years,
(respondents No.1B to 1D are resident of Near Sindhu Bhagwan, Chakradhar Nagar, Raigarh, Tahsil & District- Raigarh, C.G.
2. Nagar Palik Nigam, Raigarh through, Municipal Commissioner, Raigarh, C.G.
3. State of C.G., through the Collector, Raigarh, District- Raigarh, C.G.

---- Respondents

For Petitioner	:	Mr. Hari Agrawal, Advocate.
For respondent No.1B & 1C	:	Ms. Sharmila Singhai with Mr. Sanjay Agrawal, Advocates.
For State	:	Dr. C.B. Kesharwani, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order on Board

06/02/2020

1. This petition has been brought being aggrieved by the order dated 31.07.2019 passed by the learned First Civil Judge Class-II, Raigarh, C.G., in Civil Suit No.159/2013, in which the prayer of petitioner/plaintiff to bring amendment in pleadings under Order 6 Rule 17 of C.P.C. and application under Order 7 Rule 14 were dismissed.
2. Learned counsel for the petitioners submits that in this particular case, the Civil Suit was filed before the year 1999. On 15.04.1996 the petitioner/plaintiff filed an application praying for amendment in his plaint on the basis of the subsequent events and also to elaborate the pleading already present in the plaint. The learned trial Court has given emphasis to the proviso to the amended Order 6 Rule 17 of C.P.C., according to which, any application for amendment shall not be allowed if the trial has commenced unless the Court come to conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial and held that the petitioner/plaintiff has failed to explain accordingly and his application has been rejected.
3. It is further submitted that in the case of **State Bank of Hyderabad Vs. Town Municipal Council** reported in **2007 (1) S.C.C. 765**, it has been very clearly held that the proviso was appended to Order 6 Rule 17 and made effective from year 2002. Making reference to Section 16(2)(b) of the Amending Act of 2002, it was held that the

amended provision was not made applicable to the pleadings in the plaints filed earlier to the date the amendment was made effective, therefore, the learned trial Court should not have emphasized on the proviso and allowed the application, hence, the order passed is unsustainable, which is liable to be set aside.

4. Learned counsel for respondents No.1B & 1C submits that the conduct of the petitioner/plaintiff in this case had been to prolong the Civil Suit unnecessarily, already the petitioner/plaintiff has amended the plaints about 16 times. The present application for amendment was filed to fill up the lacunae and also to change the description of the property which changes the nature of the pleading in the plaint. A number of witnesses have been examined and the plaintiff evidence is almost complete.
5. Relying on the judgment of Supreme Court in **M. Revanna Vs. Anjanamma (Dead) by Legal Representatives & Ors.** reported in **2019 (4) SCC 332** and in **State of Madhya Pradesh Vs. Union of India and Anr.** reported in **2011 (12) SCC 268**, it is submitted that the amendment prayed for is against the facts and principles of law, hence, the trial Court has not committed any error. Therefore, it is prayed that the petition may be dismissed.
6. Respondent No. 2 is not represented.
7. Learned counsel for the State makes a formal objection on behalf of respondent No.3.
8. In reply, it is submitted by the learned counsel for petitioner/plaintiff that there is no change in the earlier stand taken by the petitioner in the proposed amendment. The bar under the proviso of Order 6 Rule 17 of C.P.C. is not applicable to the suit filed prior to year

1999.

9. Heard learned counsel for the parties and also perused the documents present.
10. The case of the plaintiff is this that the suit property was given on lease to the Lali Bai, who is the mother of petitioner, for the purposes of their resettlement as they had migrated from West Pakistan. The said Lali Bai has transferred the lease to the petitioner by a sale deed. The allegation against the respondent No.1/defendant is that he has encroached upon the property for the purposes of raising construction on 12.04.1996. Therefore, the suit was filed for relief of declaration possession and permanent injunction.
11. The application was filed under Order 6 Rule 17 of C.P.C. by the petitioner in which prayer was made to incorporate amendment regarding the proceeding before the authorities which has terminated on 21.11.2017 and also praying to elaborate the pleadings that are already present in the plaint. The application has been contested by the respondents side.
12. On perusal of the impugned order, the only reason given for dismissal by the trial Court is this that the petitioner has failed to explain as to for what reason, he could not earlier file the application for amendment and there is no circumstance present that in spite of due diligence, the petitioner could not have raised the matter before the commencement of trial, which is the direction in the proviso to Order 6 Rule 17 of C.P.C.
13. In **State Bank of Hyderabad** (Supra) has held in Paragraph 11, 12, 13:-

11.It is one thing to say that the application for amendment suffers from delay or laches but it is another thing to say that thereby the defendant was prejudiced. It is also not a case of the respondent that by reason of such an amendment, the relief which could not be granted having regard to the law of limitation has become available. The court even in such a case is not powerless although the question as to whether the relief sought for would be otherwise barred by limitation is a relevant factor to determine the issue.

12.This aspect of the matter has been considered by this Court in [L.J. Leach and Company Ltd. v. Jardine Skinner and Co.](#) [(1957) SCR 438] in the following terms:

“16.It is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice”

13.[L.J. Leach and Company Ltd.](#) (supra) was referred to in [Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil and Others](#) [(1957) SCR 595] holding:

"We think that the correct principles were enunciated by Batchelor J. in his judgment in the same case, viz., [Kisandas Rupchand](#) case, when he said:

"All amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties..... but I refrain from citing further authorities, as, in my opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that

amendment should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same : can the amendment be allowed without injustice to the other side, or can it not ?"

Batchelor J. made these observations in a case where the claim was for dissolution of partnership and accounts, the plaintiffs alleging that in pursuance of a partnership agreement they had delivered Rs. 4001 worth of cloth to the defendants. The Subordinate Judge found that the plaintiffs did deliver the cloth, but came to the conclusion that no partnership was created. At the appellate stage, the plaintiffs abandoned the plea of partnership and prayed for leave to amend by adding a prayer for the recovery of Rs. 4001. At that date the claim for the money was barred by limitation. It was held that the amendment was rightly allowed, as the claim was not a new claim."

On perusal of the judgment cited above, the reasons are very clear that an amendment can be allowed, firstly when the respondent side is not prejudiced, secondly when the fresh claim made in the amendment is not barred by any limitation, thirdly, the amendment appears to be necessary for the purpose of determining the real question in controversy between the parties.

Further, it has been clearly held in **State Bank of Hyderabad** (Supra) that in the matter of pleadings filed earlier to the year 1998, in view of the provision under Section 16(2) of the amendment Act, 2002, the proviso could not be applicable.

14. It has been held by Single Bench of Andhra Pradesh High Court in **Bogirouthu Suryakantham & Ors. Vs. Kandhi Sanyasinaidu & Ors.** reported in **2004 (2) ALD 290** and by the Single Bench of the Bombay High Court in **Badrinarayan Bansilal Somani Vs. Vinodkumar K. Shah** reported in **2003(2) MHLJ 120** that proviso introduced by amendment cannot be an impediment or bar in allowing amendment application, if it otherwise deserves on merit to be allowed.

15. In the judgment of Supreme Court in **State of Madhya Pradesh** (Supra) it has been held in paragraph 9 as under:-

9. Inasmuch as the plaintiff State of Madhya Pradesh has approached this Court invoking the original jurisdiction under [Article 131](#) of the Constitution of India, the Rules framed by this Court, i.e., The Supreme Court Rules, 1966 (in short "the Rules") have to be applied to the case on hand. Order XXVI speaks about "Pleadings Generally". Among various rules, we are concerned about Rule 8 which reads as under:

"8. The Court may at any stage of the proceedings allow either party to amend his pleading in such manner and on such terms as may be just, but only such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties."

The above provision, which is similar to Order VI Rule 17 of the Code prescribes that at any stage of the proceedings, the Court may allow either party to amend his pleadings. However, it must be established that the

proposed amendment is necessary for the purpose of determining the *real question in controversy* between the parties.

16. The ratio of the judgment in **M. Revanna** (Supra) is based on this fact that by way of amendment, a totally new case was presented.

17. After considering the ratio of law as laid down, this conclusion can be drawn that firstly the bar in the proviso to the Order 6 Rule 17 of C.P.C. shall not be applicable in this case. Secondly, the amendment proposed does not introduce new case and the facts to be brought in the pleading are some based on subsequent events and some only for the purposes of elaborating the pleading already present in the plaint, therefore, it may be so that the proposed pleading may be necessary for the complete adjudication of the dispute between the parties. Hence, I am of this view that the impugned order has not been correctly passed, therefore, the petition is allowed at motion stage. The impugned order is set aside and it is ordered that the application filed by the petitioner under Order 6 Rule 17 of C.P.C. is allowed and the trial Court is directed to give opportunity to the petitioner to amend the plaint accordingly and also provide the respondent's side opportunity to make a prayer for consequential amendment if it is so advised by their learned counsel.

18. Accordingly, this petition is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge