

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 809 of 2019

Shyam Lal Jaiswal, S/o. Late Ram Prasad Jaiswal, Aged About 88 Years, R/o. House No. 4 East, Ghampura, Near Shitla Mai Temple, Kamlesh Traders, Jabalpur, District Jabalpur, Madhya Pradesh. Through Power of Attorney Holder Kamlesh Jaiswal, S/o. Shri Shyam Lal Jaiswal, Aged About 49 Years, R/o. House No. 4 East, Ghampura, Near Shitla Mai Temple, Kamlesh Traders, Jabalpur, District Jabalpur, Madhya Pradesh.

---- Petitioner

Versus

1. Kachru Bhai Pitorda, S/o. Late Devshi Bhai Pitroda, Aged About 60 Years,
2. Birju Bhai Pitroda, S/o. Late Devshi Bhai Pitroda, Aged About 48 Years,

Both are R/o. House No. 106, Gali No. 1 Kamthi Line, Subhash Ward No. 24, Tahsil and District Rajnandgaon, Chhattisgarh.

-----Respondents

For Petitioner : Mr. R.N. Jha, Advocate

For Respondents : Mr. Sumit Shrivastava, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

10/02/2020

1. This petition has been brought under Article 227 of the Constitution of India being aggrieved by the order dated 14.01.2019, passed by the learned Additional District Judge, Rajnandgaon in Civil Suit No.39-A/2014, dismissing the

application filed by the petitioner under Order 6 Rule 17 of C.P.C.

2. It is submitted that the petitioner is defendant in the case and contesting the pleading in plaint. The written statement was already filed, however, the petitioner has at a later stage proposed amendment in his written statement, by the application filed under Order 6 Rule 17 of C.P.C. praying for incorporating amendment that initially the disputed house was given on rent to the respondents/plaintiff, which the respondent has not vacated and he is in illegal possession of the same. The learned trial Court has without making any appreciation of the prayer made, rejected the application erroneously.
3. Counsel for the respondents opposes the petition and the submission made in this respect. It is submitted that the respondents have filed civil suit praying for relief of specific performance of contract, declaration of title and permanent injunction. The possession of the respondent is not disputed, however, the nature of the possession, which the petitioner has earlier stated in his written statement is now being changed by the proposed amendment. Therefore, by allowing the amendment, the affect would of of setting-up a new case, which can not be allowed. It is also submitted that according to the proviso to Order 6 Rule 17 of C.P.C., an amendment can not be allowed, which has been filed after commencement of trial.
4. Counsel for the petitioner placed reliance on the judgment of Supreme Court in case of ***Rajesh Kumar Aggarwal & Ors. Vs.***

K.K. Modi & Ors, reported in **2006 (4) SCC 385**, in which it is settled by the catena of decision of the Supreme Court that rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.

5. I have heard the learned counsel for the parties and perused the documents placed on record.
6. On perusal of the documents filed along with the petition, which are copy of the plaint, copy of written statement and other documents, it is found that the proposed amendment stating that initially the respondent/defendant had entered the disputed house as a tenant does not appear to be disputed. Therefore, on allowing this amendment no new case would be set-up. The bar under the proviso to Order 6 Rule 17 is taken into consideration, I am of this view that this bar has no direct application. If any pleading appears to be essential to determine the real questions in controversy between the parties as the first part of the order 6 Rule 17 of C.P.C. speaks then such amendment should be permitted.
7. Therefore, on the basis of this observation, this petition is disposed off at motion stage. The impugned order dated 14.01.2019, passed by the learned Additional District Judge, Rajnandgaon in Civil Suit No.39-A/2014 is set-aside and the application filed by the petitioner for amending the written

statement dated 13.12.2018 is allowed. The learned trial Court is directed to permit the petitioner to incorporate the amendment in written statement and at the same time, it is also directed that opportunity be given to the respondents to pray for consequential amendment, if it is so advised by their counsel.

8. Accordingly, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram