

CR-850-2017 (O&M)

Date of decision: 21.01.2020

Bharat Petroleum Corporation Limited

.....Petitioner

versus

Girish Chander Sharma and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**Present:** Mr. Raman Sharma, Advocate
for the petitioner.Mr. Vikas Puri, Advocate
for respondent No.1.**FATEH DEEP SINGH, J.**

In a suit seeking decree for mandatory injunction over a dispute as to the passage between the plaintiff-Girish Chander Sharma and defendant-M/s Bharat Petroleum Corporation Limited (BPCL) (in short 'the present petitioner'), an application under Order 6 Rule 17 CPC was filed by the defendant seeking amendment of the written statement filed by the defendant to enable them to incorporate the plea of *resjudicata* as well as framing of additional issue. The same was opposed on the grounds that the trial was almost over and the case was fixed for rebuttal evidence and,

therefore, was not maintainable and further that the applicant/defendant were fully aware of the plea they were supposed to raise and cannot be allowed to filing the lacunae.

Upon hearing learned counsel for the parties and on perusal of the records, it is there in the records and is fairly conceded even at the bar by learned counsel for the two sides that the entire evidence of the parties is over and the case was fixed for rebuttal evidence of the plaintiff. Proviso to Order 6 Rule 17 CPC lays down 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 raise the matter before the commencement of the trial. The same was incorporated with effect from 01.07.2002 with a view to cut down the undue prolonging of the civil matters by the parties by resorting to such amendments. Furthermore, the Hon'ble Apex Court in a subsequent view held that it is only when the Court draws the conclusion that in spite of due diligence, the parties could not raise the matter, only then, the Court needs to show indulgence to the prayer of a party. The trial had commenced and culminated except leading to rebuttal evidence, if any, and therefore, the entire case of the parties have come on the records.

The counsel for the petitioner could not convince how the applicants were pursuing the matter with due diligence and it was

bonafide inadvertent error which has come up in the pleadings. More so, no doubt, it is the primal duty of the Court to decide, if such an amendment is necessary to adjudicate, as to the real dispute between the parties. However, proviso to Order 6 Rule 17 CPC lays down an embargo and which, in the present case, does not satisfy the conditions provided for allowing such a prayer.

As has been submitted by learned counsel for the respondents, there was a pendency of previous litigation wherein Ex.P10 to Ex.P13 were proved and which case stood withdrawn by the then plaintiff. Therefore, by all means, the applicant/revisionist were fully aware of the same and therefore, were fully aware of the pleas and such a cross casual approach certainly goes to the detriment of the petitioner. The impugned order dated 06.01.2017 has rightly dismissed the application of the petitioner and thus, finding no merits, the same stands dismissed.

(FATEH DEEP SINGH)
JUDGE

21.01.2020

Neha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No