

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WP227 No. 1 of 2020**

- Om Prakash Sultaniya S/o Late Ganpat Rai, Aged About 69 Years, R/o Mahantpara, Shivrinarayan, Tahsil Nawagarh District Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

**---- Petitioner**

**Versus**

1. Radhelal Soni S/o Late Chakradhar Prasad Soni, Aged About 62 Years, R/o Bhogahapara - Shivrinarayan, Tahsil Nawagarh District Janjgir-Champa, Chhattisgarh. (Defendant No.1), District : Janjgir-Champa, Chhattisgarh
2. The State Of Chhattisgarh through the Collector, Janjgir-Champa, District Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

**---- Respondents**

**WP227 No. 6 of 2020**

- Ganesh Prasad Agrawal S/o Maluram Agrawal, Aged About 47 Years R/o Vinoba Nagar, Talapara, Road, Bilaspur , Tahsil Bilaspur District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

**---- Petitioner**

**Versus**

1. Radhelal Soni S/o Late Chakradhar Prasad Soni, Aged About 62 Years, R/o Bhogahapara - Shivrinarayan , Tahsil Nawagarh District – Janjgir-Champa Chhattisgarh., (Defendant No.1), District : Janjgir-Champa, Chhattisgarh
2. The State Of Chhattisgarh, through the Collector, Janjgir - Champa District Janjgir-Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

**----Respondents**

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For Petitioners – Shri A.K. Prasad, Advocate.

For Respondent No.1 – Shri Manoj Paranjpe and Shri Vevek Mishra, Advocates.

For State/Respondent No.2 – Shri Sameer Oraon, Govt. Advocate.

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**Order on Board**

**14-09-2021**

1. WP227 No.1 of 2020 has been brought being aggrieved by the order dated 04-11-2019 by which the application under Order 6 Rule 17 of the CPC filed by the petitioner has been dismissed by the appellate Court, i.e., the Court of third Additional District Judge, Janjgir- District Janjgir-Champa, in Civil

Appeal No.23A/2019.

WP227 No.6 of 2020 has been brought being aggrieved by the order dated 04-11-2019 by which the application under Order 6 Rule 17 of the CPC filed by the petitioner was dismissed by the appellate Court, i.e., the Court of third Additional District Judge, Janjgir- District Janjgir-Champa in Civil Appeal No.24A/2019.

2. It is submitted by the counsel for the petitioners that the appeal is continuation of the civil suits. The petitioners in both the cases made a prayer under Order 6 Rule 17 of the CPC praying to bring amendment in the plaints on the basis of the subsequent developments that have taken place, therefore, the amendment was necessary for complete adjudication of the dispute between the parties. The impugned orders passed are erroneous, illegal, arbitrary and unsustainable.

3. Learned counsel for the respondents in both the cases submits that the prayer for amendment was made by the petitioners in both the cases in the stage of first appeal. There is no provision under Order 41 of the CPC for preferring such application at the appellate stage. However, in case the appellate Court finds necessity of the amendment, then the course open would be remand the case to the trial Court under the provision of remand present in Order 41 of the CPC.

Reliance has been placed on the judgment of this Court in the case of **Shobhit Ram @ Shobharam Vs. Bajrang Lal; State of Chhattisgarh; Kailash; Kiran; Santoshi**, 2017 (5) Cg LJ 122 and on the judgment of Madhya Pradesh High Court in the case of **Khemchand V. The Government of M.P and others.**, 1972 J L J 482. In both the cases it was held that the application under Order 41 Rule 27 of the CPC should not be decided prior to hearing the appeal on merits. In the case of Khemchand V. The Government of M.P and others (supra), it has been held by Madhya Pradesh High Court that the same

principle governs disposal of application for amendment. Similar view has been taken by M.P. High Court in the case of **Vedwati (Smt.) v. Jagannath**, (1994) 1 MP Weekly Notes 131 and **Sampurna Singh Vs. Harisingh** (1997) 2 M.P. Weekly Notes 147. Hence, it is prayed that both the petitions be dismissed.

4. Taking into consideration the position in law regarding application under Order 41 Rule 27 as well as application under Order 6 Rule 17 of the CPC, which are filed in appellate stage, in the above pronouncements, proper course that was open for the appellate Court was to keep the applications for amendment pending until the stage of hearing the appeals on merits and these applications should have been decided in the appellate orders. As the amendment is sought in the plaint itself, therefore, in case the amendment is allowed there would be a requirement to remand the case with directions as may be necessary for complete adjudication of the case. Therefore, for these reasons, the prayer in both the petitions for setting aside the impugned orders is allowed. The impugned orders in both the cases are set aside. Applications under order 6 Rule 17 of the CPC filed in both the cases are restored. The learned appellate Court is directed to hear on these applications at the stage of hearing the appeals on merits and decide the applications in accordance with law, without being influenced by the observations made in this order.

5. The petitions are disposed off.

Sd/-

**(Rajendra Chandra Singh Samant)**  
**Judge**