

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.51 of 2023

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Mohammad Sarfuddin @ Sarfuddin S/o Mohammad Samsuddin, Resident of
Bombay Deing Ke Piche, Hospital Road, P.S.- Siwan Town, District - Siwan,
Bihar.

... .. Petitioner/s

Versus

Arun Kumar, S/o Late Baijnath Prasad Resident of Naya Bazar, P.S. - Siwan
Town, Dist. - Siwan, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ashok Kumar, Advocate
For the Respondent/s : None.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 28-11-2024

Heard learned counsel for the petitioner.

2. Despite repeated calls, no one appears for the respondents. It transpires from the office note that though the learned counsel for the respondent was granted time for filing the counter affidavit vide order dated 04.07.2024, but no counter affidavit has been filed.

3. The instant petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 01.12.2022 passed by the learned Munsif-1st, Siwan in Eviction Suit No. 04 of 2018 whereby and whereunder the learned trial court rejected the application filed by the defendant/petitioner for amendment in the written statement under Order 6 Rule 17 of the Civil Procedure Code (hereinafter referred to as the



‘Code’).

4. The learned counsel for the petitioner submits that the respondent filed a suit for eviction on 03.04.2018 and the written statement was filed by the defendant/petitioner on 02.04.2019. As some typing errors were found in the written statement, the amendment application for correction in the written statement was filed on 01.10.2019. A rejoinder was also filed on 10.02.2022 to the said amendment application. The learned trial court heard and dismissed the amendment application filed under Order 6 Rule 17 of the Code. The learned counsel further submits that the ground for rejection has been belated filing of the amendment application, but it is settled principle of law that the amendment petition can be considered at any stage and the order impugned is illegal.

5. I have perused the records and from the copy of the amendment application, I find that only the first amendment by which the petitioner has sought to correct the year 1970 to 1974 in paragraph 13 of the written statement could have been allowed as typographical error. Other amendments at sl.nos. 2 & 3 are amendments of facts and there is no explanation for not incorporating these facts at the time of filing of the written statement or even prior to commencement of trial.



6. Order VI Rule 17 of the Code reads as under :

“17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided 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 have raised the matter before the commencement of trial”.

7. Evidently, the amendments have been sought to be introduced after the evidence of the plaintiff was closed. The provision is quite specific that amendment shall not be allowed after commencement of the trial unless the party seeking amendment could show that despite due diligence, he could not have brought the said amendment earlier in time. Apparently, the petitioner has failed to show due diligence for not bringing the amendments at sl.nos. 2 & 3 prior to commencement of trial.

8. Therefore, in the light of discussion made so far, the impugned order dated 01.12.2022 is modified to the extent that the amendment at sl.no. 1 regarding substitution of the year 1970 to 1974 at 8th and 9th line of paragraph 13 of the written



statement is allowed and rest of the impugned order is affirmed.

9. With the aforesaid modification in the impugned order dated 01.12.2022, the instant petition stands disposed of.

10. Since part of the amendment has been allowed in the written statement, the respondent will be at liberty to rebut/controvert the same in accordance with law.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.11.2024
Transmission Date	NA

