IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.441/2024.
Date of Decision: 23rd December, 2024.

Girja Nand & Ors. .....Petitioners

Versus

Bhagirathi (deceased) through LRs & Ors.

....Respondents

Coram

The Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?[1]

For the Petitioners: Mr. Sumit Sharma, Advocate.

For the Respondents: Mr. R.K. Sharma, Sr. Advocate with Ms. Anita and Ms. Muskan, Advocates.

Bipin Chander Negi, Judge *(oral).*

The present petition has been filed against the impugned order dated 16.03.2023, passed by the ***learned Civil Judge, Karsog, District Mandi, HP in CMA No.152 of 2022 in Civil Suit No.1 of 2016***, whereby an application filed by the petitioners for amendment of the written statement has been disallowed.

2. Heard counsel for the parties and perused the pleadings appended along with the petition.

3. The suit, in the case at hand, was filed on 04.01.2016. Written statement had been filed on 12.05.2016. The suit was decided by the trial Court on 19.09.2016. However, on appeal, the matter was remanded back to the trial Court on account of the fact that the predecessor-in-interest of the present

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes

petitioner i.e. defendant No.1 before the trial Court had expired before passing of the judgment dated 19.09.2016.

4. Roughly after 7-8 years of the remand by the First Appellate Court, an application by the legal heirs of defendant No.1 i.e. present petitioners had been filed before the trial Court under Order VI Rule 17 of CPC, which reads as follows:-

> **ORDER-VI PLEADINGS GENERALLY**
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> ***Rule 17 Amendment of Pleadings***:- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings 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:
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> ***"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."***
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> ***(Emphasis Supplied)***

5. Admittedly, in the case at hand, trial has commenced long back. In terms of proviso to Order VI Rule 17 of CPC, a duty is cast upon the Court to examine, as to whether there was an exercise "due diligence" on the part of the party, which is seeking amendment. It is only when the Court comes to the conclusion that there was "due diligence" on the part of the party seeking amendment, then the Court would undertake the exercise as to whether the proposed amendment is required to be allowed or not.

6. The sine qua non being "due diligence." Conspicuous by absence in the present application filed for amendment before the trial Court is the aspect of "due diligence". There is gross delay in moving the application. A 'plea of error' on the part of the previous counsel representing the petitioners before the trial Court is sought to be raised. The same amounts to admitting want of 'due diligence.' In the said circumstances, there arises no occasion to examine the second ingredient of the proviso of Order VI, Rule 17 of CPC. In this respect, reference can also be made to the judgment of Coordinate Bench of this High Court, passed in ***CMPMO No.356 of 2022, titled Sarbjit Singh Vs. Harbhajan Kaur***, decided on 03.11.2024.

7. In view of the aforesaid, present petition is dismissed being devoid of merit and so also the pending application(s), if any.

(Bipin Chander Negi)
Judge

23rd December, 2024
(Gaurav Rawat)