CGHC010062242026 2026:CGHC:43540

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 234 of 2026

Mrs Zubeda Khan W/o Late Harun Khan, Aged About 40 Years, R/o Stationpara Rajnandgaon (C.G.) Present Address- Premnagar, Mowa, Near Naunihal School, District- Raipur (Chhattisgarh)

... Petitioner

versus

1 - Umesh Sahu S/o Late Ramadhar Sahu, Aged About 45 Years, R/o Ward No.04, Purana Dhaba Tehsil And District- Rajnandgaon (C.G.)
2 - State Of Chhattisgarh Through- Collector Rajnandgaon District- Rajnandgaon (C.G.)

... Respondents

For Petitioner	:	Shri Dinesh Yadav, Advocate appears on behalf of Shri Aditya Bhardwaj, Advocate.
For Respondent No.1	:	Shri Nitesh Jain, Advocate.
For Respondent No.2/State	:	Ms. Isha Jajodiya, Panel Lawyer.

NARESH KUMAR KAMDE Digitally signed by NARESH KUMAR KAMDE Date: 2026.10.13 10:53:51 +0530

S.B. Hon'ble Shri Justice Ravindra Kumar Agrawal

Order on Board

07/10/2026

1. Heard.

2. Present is a writ petition under Article 227 of the Constitution of India filed by the petitioner against the impugned order dated 21/01/2026 passed by the learned First Civil Judge Senior Division, Rajnandgaon (Chhattisgarh) in Civil Suit No. 118-A/2022, whereby the application filed by the defendant No.1 under Order 6 Rule 17 of CPC has been rejected.

3. Learned counsel for the petitioner would submit that the petitioner is the defendant No.1 before the learned trial Court, where the respondent, who is the plaintiff, is prosecuting a suit for specific performance of the contract dated 10/08/2021. The plaintiff has filed the suit on 12/09/2022, in which, the petitioner/defendant No.1 filed her written statement on 20/12/2022 and denied the execution of agreement between them on the submission that the alleged agreement dated 10/08/2021 is a forged and fabricated document and no such agreement was executed between them. He would further submit that later on, another suit has been filed by the sister of the defendant No.1 for declaration of title and permanent injunction in respect of the suit property on the basis of 'Hibanama', which was allegedly executed in her favour, thereafter the defendant No.1 has filed an application for amendment in her written statement, by which, she wants to elaborate the pleadings, which has already been made in a written statement with certain facts. He further submits that the cross-examination of the plaintiff's witness has not been started yet, hence, no prejudice is being caused to the plaintiff, if the proposed amendment would have been allowed by the learned trial Court. The proposed amendment is relevant and necessary for just decision of the suit, therefore, the same may be permitted to incorporate in the written statement filed by the defendant No.1 by setting aside the impugned order.

4. On the other hand learned counsel appearing for the respondent No.1 opposes the submission made by learned counsel for the petitioner and would submit that the defendant No.1 has made her appearance in the suit in the year 2022 itself and she filed her

written statement on 20/12/2022 denying the execution of the agreement between them. Even if, another suit was filed by sister of the defendant No.1, the pleadings and facts of that case, which was in between the defendant No.1 and her sister is not relevant as the plaintiff in the present case is claiming specific performance of the contract dated 10/08/2021. He would further submit that the defendant No.1 has filed her written statement in the year 2022 itself and on 23/06/2023, she has already filed another application for amendment, which was allowed by the learned trial Court vide order dated 23/01/2024 and, thus, whatever amendment, she proposed to incorporate in her written statement, could have been made on the earlier occasion also, but she did not chosen to do so. Learned counsel for the respondent has relied upon the judgment of Hon'ble Supreme Court in the case of **'Vidyabai and others vs. Padmalatha and another'** reported in **(2009) 2 SCC 409**. He would further submit that the case was fixed for recording plaintiff's evidence and an affidavit under Order 18 Rule 4 of CPC has already been filed before the learned trial Court and the trial Court has commenced the trial and proviso to Order 6 Rule 17 of CPC prohibits amendment in the pleadings, after commencement of the trial. The judgment of **Vidyabai** (supra) has been further considered by the Hon'ble Supreme Court in the case of **'Pandit Malhari Mahale vs. Monika Pandit Mahale and others'** reported in **(2020) 11 SCC 549**. Since the defendant No.1 cannot be permitted to amend the written statement after commencement of the trial, her application is liable to be rejected, which has already been done by the learned trial Court, therefore, there is no merit in the present

petition and the same is liable to be dismissed.

5. I have heard learned counsel appearing for the parties and perused the documents annexed with this petition.

6. From perusal of the plaint (Annexure-P/2), it transpires that the plaintiff has filed a suit for specific performance of the contract dated 10/08/2021 against the defendant No.1 and the defendant No.1, by her written statement dated 20/12/2022, specifically denied the execution of the agreement executed between them. It is also pleaded that on 11/11/2021, she already sent her reply to the legal notice sent by the plaintiff. The execution of agreement between them was specifically denied by the defendant No.1. It further transpires from the impugned order passed by the learned trial Court that the petitioner has earlier filed an application for amendment in the pleading on 23/06/2023, which was allowed on 23/01/2024 and thereafter, on 15/09/2025 the petitioner/defendant No.1 has filed another application for amendment in the written statement. From perusal of the copy of the amendment application under Order 6 Rule 17 of CPC (Annexure-P/6), it transpires that a lengthy amendment proposed by the petitioner to incorporate in her written statement with respect to subject transaction of the alleged agreement and her family affairs with her sister. The contents of the proposed amendment application reveals that the facts, which the defendant No.1 wants to brought on record by way of amendment in the written statement is of prior to filing of her written statement, which she could have been made on earlier occasion also. Undisputedly, the issues have been framed and an affidavit under

Order 18 Rule 4 of CPC has been filed by the plaintiff and as per judgment of **Vidyabai** (supra), the trial in the case commenced and after commencement of the trial, amendment in the pleadings is prohibited.

7. In the case of **Vidyabai** (supra) Hon'ble Supreme Court has held that para 10,11 and 19, as under :-

> "10. By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), Parliament inter alia inserted a proviso to Order 6 Rule 17 of the Code, which reads as under :
>
> > "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."
>
> It is couched in a mandatory form. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied viz, it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.
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> 11. From the order passed by the learned trial Judge, it is evident that the respondents had not been able to fulfil the said precondition. The question, therefore, which arises for consideration is as to whether the trial had commenced or not. In our opinion, it did. The date on which the issues are framed is the date of first hearing. Provisions of the Code of Civil Procedure envisage taking of various steps at different stages of the proceeding. Filing of an affidavit in lieu of examination-in-chief of the witness, in our opinion, would amount to "commencement of proceeding".
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> 19. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6 Rule 17 of

the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint."

8. Further in the case of **Pandit Malhari Mahale** (supra), Hon'ble the Supreme Court has reiterated the judgment of **Vidyabai** (supra) and held in para 6 and 7, as under :-

"6. From the evidence on record, it does appear that evidence had begun and thereafter amendment application was filed. Without there being any finding by the Court as contemplated by Order 6 Rule 16 proviso, the Court ought not to have allowed the amendment.

7. In the present case, the Civil Judge has not returned any finding that the Court is satisfied that in spite of due diligence, the party could not have raised the matter before the commencement of trial. In Vidyabai v. Padmalatha, this Court observed in para 19 as under:

"19. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6 Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint."

9. Undisputed fact of the present case is that the trial has already commenced and thereafter, the petitioner/defendant No.1 has filed an application for amendment in the written statement with respect to facts available to her before filing of her written statement and

also in view of the fact that earlier also on 23/06/2023, the petitioner/defendant No.1 had filed an application under Order 6 Rule 17 of CPC, which was allowed on 23/01/2024 and such proposed amendment could have been made on earlier occasion also, when she has filed her application for amendment, but she has not claimed the said amendment, thus, this Court is of the considered opinion that the learned trial Court has not committed any illegality or jurisdictional error in rejecting the application under Order 6 Rule 17 of CPC filed by the petitioner/defendant No.1, after commencement of the trial.

10. Accordingly, the writ petition filed by the petitioner fails and hereby dismissed. As a consequence thereof, the interim order dated 24/02/2026 stands vacated.

Sd/-

(**Ravindra Kumar Agrawal**)
JUDGE

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