

(2018) 09 CHH CK 0114

Chhattisgarh High Court

Case No: Writ Petition (227) No. 772 Of 2018

Bal Kunwar And Ors

APPELLANT

Vs

Bhulau Kaushik And
Ors

RESPONDENT

Date of Decision: Sept. 7, 2018

Acts Referred:

Code Of Civil Procedure 1908 & Order 6, Rule 17#Constitution Of India, 1950 & Article 227

Citation: (2018) 09 CHH CK 0114

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: Ratnesh Kumar Agrawal, Avinash Singh

Final Decision: Dismissed

Judgement

Sanjay K. Agrawal, J

1. The petitioners / plaintiffs have filed a suit way back on 26.12.2003 and they closed their evidence on 21.02.2018 and thereafter, on 03.08.2018, the

plaintiffs have filed an application seeking relief to amend the plaint by addition of 19 defendants and other averments which has been rejected by the

trial Court finding no ground against which this writ petition has been filed.

2. Mr. Ratnesh Kumar Agrawal, learned counsel for the petitioners submits that trial Court is absolutely unjustified in rejecting the application for

amendment and he placed reliance on the judgment rendered by the Supreme Court in the case of *Surender Kumar Sharma v. Makhan Singh* (2009)

10 SCC 626, in which their Lordships have held in paragraph -6 as under :-

6. It is also well settled that even if the amendment prayed for is belated, while considering such belated amendment, the court must bear in favour of

doing full and complete justice in the case where the party against whom the amendment is to be allowed, can be compensated by costs or otherwise.

(See B.K. Narayana Pillai v. Parameswaran Pillai.) Accordingly, we do not find any reason to hold that only because there was some delay in filing

the application for amendment of the plaint, such prayer for amendment cannot be allowed.

3. I have heard learned counsel for the petitioners / plaintiffs.

4. Proviso to Order 6, Rule 17 of the CPC provides 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 and the said

proviso has been held to be mandatory by the Supreme Court in the matter of Vidyabai and others v. Padmalatha and another 2009 (2) SCC 409.

5. The suit was filed by the petitioners / plaintiffs way back on 26.12.2003 and they have closed their evidence on 21.02.2018 and after a further delay

the application for amendment has been filed and that application is blissfully silent and it did not say that despite due diligence why the petitioners

could not raise the matter before the commencement of the trial except saying that during preparation of final hearing, the above defect was noticed.

6. Indisputably, the application has been filed by the petitioners after commencement of trial. The petitioners have failed to assign plausible reason why

in spite of due diligence amendment application could not be made before the commencement of trial.

7. In view of above, I do not find any illegality in the order impugned warranting interference of this court under Article 227 of the Constitution of

India.

8. Thus, the petition being devoid of merit is liable to be and is hereby dismissed. No order as to costs.