

(2018) 08 CHH CK 0104

Chhattisgarh High Court

Case No: Writ Petition 227 No. 676 Of 2018

Sourabh Tamrakar And Ors

APPELLANT

Vs

Sudhir Tamrakar And Ors

RESPONDENT

Date of Decision: Aug. 7, 2018

Acts Referred:

- Code Of Civil Procedure 1908 - Order 6 Rule 17

Hon'ble Judges: Goutam Bhaduri, J

Bench: Single Bench

Advocate: Avinash Chand Sahu, SRJ Jaiswal

Final Decision: Disposed Of

Judgement

Goutam Bhaduri, J

1. Heard.

2. The present petition is against the order dated 26.07.2018, whereby an application preferred by the petitioners under Order 6 Rule 17 CPC to add certain word and relief in the prayer clause in the plaint, has been dismissed.

3. Learned counsel for the petitioners submits that the learned Court below without any application of mind simply dismissed the application even without looking into the nature of the suit. He further submits that the amendment would not affect the suit as the suit is already filed for declaration, injunction and also for partition and for possession. He went through the pleading and would submit that under the circumstances no any evidence is further required, therefore, the petitioner may be allowed to amend the same, otherwise he would suffer irreparable loss and subsequently he cannot

claim the same prayer in the subsequent suit. He relied on the case law of Andhra Bank Versus ABN Amro Bank N.V. and others {(2007) 6 SCC 167} and submits that only on the ground of delay the application should not have been dismissed simplicitor, therefore, the petition may be allowed.

4. Perused the order dated 26.07.2018. The Court has observed that the case is already fixed for final hearing, therefore, the trial has already closed.

Primary reading of the order would show that the final argument yet to be advanced before the Court, therefore, certainly in this case the trial has not

come to an end. Trial will only come to an end with the passing of the judgment and decree or when the case is closed for orders. The nature of the

amendment which is moved and the pleading also perused. The nature of the amendment primarily shows that the prayer made appears to be the

integral part of the pleading and since it has been submitted by the parties that no further evidence would be required only prayer clause is to be

amended whereas any amendment in the body of the plaint is not sought for and it is for the Court to grant the relief and the circumstances also allow

the Court to mould the relief if the facts so suggest in a given case. In view of this order dated 26.07.2018 is set aside and the application filed by the

petitioner under Order 6 Rule 17 CPC is allowed. The necessary amendment be carried out on the next date immediately. Thereafter, the trial Court

shall proceed accordingly.

5. With such observation, the petition stands disposed of.