

**NAFR****HIGH COURT OF CHHATTISGARH AT BILASPUR****WP227 No. 38 of 2023**

1 - Indra Bhushan Chandranahu S/o Late Shri Kondaram Chandranahu, Aged About 62 Years R/o Ear Radha - Krishna Temple, Tifra, Bilaspur, District Bilaspur Chhattisgarh.

... **Petitioner(s)**

versus

1 - Umashankar Chandranahu S/o Late Shri Kondaram Chandranahu Aged About 60 Years R/o Pushkar Convent School Premises, Tifra, Bilaspur, Tahsil And District Bilaspur Chhattisgarh.

2 - Ramakant Chandranahu S/o Late Shri Kondaram Chandranahu, Aged About 53 Years R/o By The Side Of Pushkar Convent School Tifra, Bilaspur, Tahsil And District Bilaspur Chhattisgarh.

3 - Shailesh Chandranahu S/o Late Ramsharan Chandranahu, R/o By The Side Of Pushkar Convent School, Tifra, Bilaspur, Tahsil And District Bilaspur Chhattisgarh.

4 - State Of Chhattisgarh Through The Collector, Bilaspur District Bilaspur Chhattisgarh.

... **Respondent(s)**

For Petitioner(s)	:	Mr. Somnath Verma, Advocate
For Respondent No. 1	:	Mr. Anshuman Shrivastava, Advocate
For State/Respondent No. 4	:	Mr. Vivek Siddharath Ojha, PL

Hon'ble Shri Justice Sachin Singh Rajput**Order on Board****31/01/2026**

Challenge in this writ petition is to an order dated 03.09.2022 passed by the 9th Civil Judge Class-2, Bilaspur, CG in Civil Suit No. 394-A/2016,



by which the application under Order 6 Rule 17 of CPC filed by the respondent No. 1 for amendment in the plaint was allowed.

2. Learned counsel for the petitioner submits that respondent No. 1 is the plaintiff who has filed a civil suit seeking declaration of title, declaration that the sale deed dated 31.05.2016 is null and void, and for recovery of possession in respect of the suit property, which has been properly described in the plaint. The said suit was filed in the year 2016. The petitioners are the defendants in the said suit and they have filed their written statement denying the averments made in the plaint. Thereafter, issues were framed and the plaintiff led his evidence. After closure of the plaintiff's evidence, an application under Order 6 Rule 17 of the Code of Civil Procedure was filed on 23.12.2021 seeking amendment of the plaint by incorporating certain facts, including the addition of paragraph 12-A. He further submits that by the impugned order, the learned Trial Court has allowed the said amendment application. It is contended that in the entire application, the plaintiff has failed to demonstrate any due diligence explaining as to why such amendment could not have been sought prior to the commencement of the trial. Since the trial had already commenced, in the absence of compliance with the proviso to Order 6 Rule 17 CPC regarding due diligence, the amendment application ought not to have been allowed. The learned Civil Judge, therefore, committed a manifest error of law and exceeded the jurisdiction vested in him while allowing the application. Consequently, the impugned order deserves to be set aside. He placed reliance upon the judgment of the Hon'ble Supreme Court in case of **Pandit Malhari Mahale Vs Monika Pandit Mahale** reported in **AIR 2020 SC (SUPP) 412**. He further submits that no finding has been recorded by the learned Civil Judge regarding satisfaction as to the reasons why the plaintiff was precluded from filing the written statement before the commencement of the trial.



3. Learned counsel for respondent No. 1 submits that the learned Civil Judge has rightly allowed the application. Though the application is not happily worded, no prejudice would be caused to the petitioner by allowing the same. Alternatively, he submits that in the event this petition is allowed, liberty may be reserved to him to file a fresh application in compliance with the proviso to Order VI Rule 17 of the CPC.

4. Learned counsel for respondent No. 4 submits that the dispute is essentially between the petitioner and respondent No. 1.

5. Heard learned counsel for the parties and perused the record.

6. The suit was filed in the year 2016. From the documents appended to the writ petition, it is manifestly clear that the written statement had already been filed. It is also not in dispute that after framing of the issues, the plaintiff examined his witnesses and closed his evidence. When the matter had reached the stage of recording of the defendants' evidence, an application for amendment of the written statement was filed, seeking certain amendments including the addition of a new paragraph having substantive effect. The application filed by respondent No. 1 does not disclose that despite exercising due diligence, he was prevented from seeking such amendment prior to the commencement of the trial. A perusal of the impugned order further reveals that the learned Civil Judge has not recorded any satisfaction to the effect that, despite due diligence, respondent No. 1 was unable to move the application for amendment before commencement of the trial, as mandated under the proviso to Order VI Rule 17 of the Code of Civil Procedure. In this context, the Hon'ble Supreme Court in case of *Pandit Malhari Mahale (supra)* has held as under:—

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



6. 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 & Ors. v. Padmalatha & Anr. [(2009) 2 SCC 409], this Court observed in para 19 as under:

“19. It is 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.

7. Thus, in the opinion of this Court, the application filed by respondent No. 1 is hit by the proviso to Order VI Rule 17 of the Code of Civil Procedure. The learned Civil Judge, while allowing the said application, exercised jurisdiction with material irregularity and therefore, the impugned order cannot withstand judicial scrutiny by this Court. Accordingly, the impugned order is set aside. However, liberty is reserved in favour of respondent No. 1 to file a fresh application, if so desire, in accordance with law.

8. Accordingly, this writ petition is allowed.

Sd/-

(Sachin Singh Rajput)

JUDGE

Pawan