

(2006) 04 JH CK 0023
In the Jharkhand High Court

Sheo Temple and Idol

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-04-2006

Acts Referred:

Citation : (2007) 1 JCR 330

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Nerendra Nath Tiwari, J.—In this writ application, the petitioner has prayed for quashing the order dated 17.12.2005 passed by the learned Munsif, Lohardaga in Title Suit No. 20 of 2001, whereby the learned Court below has refused to allow the amendment, sought for by the plaintiff-petitioner on the ground that the proposed amendment will change the nature and character of the suit and that the defendant will be prejudiced, as the trial has already been commenced and evidences of the witnesses have been closed.

2. Learned Counsel for the petitioner submitted that the amendment sought for intended to correct the clerical errors and they are formal in nature. The plaintiff has not sought for any amendment for replacing any new relief against the defendant, neither any new case has been pleaded to the surprise of the defendant. Learned Counsel submitted that without any application of mind, learned Court below has mechanically observed that the proposed amendment will change the nature and character of the suit.

3. Learned Counsel urged that the amendment Is required to avoid further litigation and for the ends of justice.

4. Notice was issued to the respondent No. 5 while respondent Nos. 1 and 4 are represented through the Government counsel.

5. A counter affidavit has been filed on behalf of the respondents, in which it has

been stated that the amendment would go to change the nature of the suit, because of certain additions of new words, which was not on the record.

6. It has further been submitted that the trial has already commenced and the petition has been deliberately filed to delay the disposal of the suit.

7. On perusal of the reply, it is evident that the defendant has not complained any serious prejudice to his defence or withdrawal of any admission made by him. It appears from the petition for amendment that amendments are intended to supply specific particulars based on the earlier averments made in the plaint and nothing new has been sought to be added so as to change the nature and character of the suit. Learned Court below has refused the plaintiffs prayer without considering that the amendment should be generally allowed, unless the amendment comes within certain exceptions, such as withdrawal of any right accrued to the defendant or withdrawal of admission or go to change the nature of the suit. The delay in making such prayer may cause some inconvenience to the other side, as the amendment in the plaint may require any additional or further pleading on behalf of the defendant. But the same by itself cannot be a ground for refusing the amendment, as prayed for by the plaintiff. Such inconvenience to the defendant can be compensated by awarding cost, as a condition for allowing the amendment at belated stage.

8. Considering the above, I find that the order of the learned Court below does not conform to the established principles of law relating to amendment of the pleading and is unsustainable. The impugned order is thus, set aside.

9. The amendment prayed for by the plaintiff-petitioner is allowed subject to payment of cost of Rs. 1000/- to the defendant in the Court below within a period of four weeks from the date of receipt/production of a copy of this order. The defendant shall be at liberty to file additional written statement, if so required.