

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.817 of 2022

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The Bihar State Board of Religious Trusts through its Chairman,
Vidyapati Marg, Patna, Bihar- 800001.

... ... Petitioner/s

Versus

1. Shri Ravi Jalan Son of Late Lok NathJalan Resident of Prakash Cotton Mill Compound, Ganpat Rao Kadam Marg, Lower Parel, Mumbai- 13.
2. Shri RajendraJalan Son of Late Lok NathJalan Resident of Prakash Cotton Mill Compound, Ganpat Rao Kadam Marg, Lower Parel, Mumbai- 13.
3. Shri Anil Jalana Son of Late Tola Ram Jalan Resident of Prakash Cotton Mill Compound, Ganpat Rao Kadam Marg, Lower Parel, Mumbai- 13.
4. Shri Ashok Jalan Son of Late Tola Ram Jalan Resident of Prakash Cotton Mill Compound, Ganpat Rao Kadam Marg, Lower Parel, Mumbai- 13.
5. Shri DilipJalan Son of - Late Champa Lal Jalan Resident of Prakash Cotton Mill Compound, Ganpat Rao Kadam Marg, Lower Parel, Mumbai- 13.
6. Amitabh Jalan Son of- Late Dharam Chandra Jalan Resident of Prakash Cotton Mill Compound, Ganpat Rao Kadam Marg, Lower Parel, Mumbai-13.
7. Shri Vishnu Jalan Son of- Late GajanandJalan Resident of Prakash Cotton Mill Compound, Ganpat Rao Kadam Marg, Lower Parel, Mumbai- 13.

8. Ravi Poddar Son of- Shri Shiv Bhagwan Poddar Resident of- Mohalla- Jawaharlal Road, under P.S.- Town P.O., P.O.- Town, District- Muzaffarpur, Bihar- 842001.
9. Dilip Jalan Son of Late Pasupati Jalan near Tilak Maidan, P.O. and P.S.- Town (Muzaffarpur), District- Muzaffarpur, The Secretary, Seva Sangh Nyas Committee.

... .. Respondent/s

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Code of Civil Procedure---Order VI Rule-17, section 151---Indian Evidence Act 1872---section 58---Amendment of Pleadings---petition for quashing order refusing one of the amendments sought on behalf of the petitioner/opposite party no. 1 in written objection wherein the possession of the heirs of the deceased trustee was admitted by the Petitioner--- Findings:-all amendments could be allowed unless by the amendment, the parties seeking amendment seek to withdraw any clear admission made by the party which confers a right on the other side ---petitioner herein is trying to resile from admission made in their written statement and in view of the settled law, such amendment could not be allowed--- no due diligence has been shown for not bringing the amendment prior to commencement of trial--- no infirmity in the impugned order---petition dismissed. (Para- 13-15)

AIR 1974 SC 471, AIR 1977 SC 680, 2022 SCC OnLine SC 1128

.....Relied Upon.

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... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Shekhar Singh, Adv.
For the Respondent nos. 1 to 8	:	Mr. Sanjeev Ranjan, Adv. Ms. Astha Ananya, Adv.
For the Respondent no. 9	:	Mrs. M. Chaterjee, Adv.

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT**

Date : 05-02-2025

The instant petition has been filed for quashing the order dated 28.06.2022 passed in Miscellaneous Case No. 43 of 2017 by learned Additional District Judge-XII, Muzaffarpur whereby and whereunder one of the amendments sought on behalf of the petitioner/opposite party no. 1 under Order VI



Rule-17 read with Section 151 of the Code of Civil Procedure (in short “the Code”) has been refused.

2. Briefly stated facts which appear from the record are that the petitioner, Bihar State Board of Religious Trusts (hereinafter “the Board”), issued a notification contained in Memo No. 2010 dated 07.10.2016 under Section 32 of the Bihar Hindu Religious Trusts Act, 1950 (hereinafter “the Act”) constituting a Trust Committee for management of the affairs of Seva Sangh Nyas Parshad, Saraiyaganj, Muzaffarpur which is a public Trust registered with the Board vide Registration No. 3992. The respondents filed a Miscellaneous Case bearing No. 43 of 2017 dated 15.07.2017 before the learned District Judge, Muzaffarpur under Section 32(3) of the Act, 1950 seeking the following reliefs:-

“A. That upon consideration of the facts stated above the court be pleased to set aside the scheme so settled vide order dated 07.10.2016 as published in Bihar Gazette dated 26.04.2017 by the opp. Party with respect to Schedule-I of the case application.

B. That the cost of the case be awarded to the applicants.

C. That the court be pleased to grant any other relief or reliefs to which the applicants be found entitles.”

Written objection was filed on behalf of the petitioner/opposite party no. 1 on 15.03.2019. Finding certain



typographical/factual errors, petitioner/opposite party no. 1 filed an amendment petition under Order VI Rule 17 read with Section 151 of the Code seeking the following amendments:

- “1. That in line no. 9 of Para 5 of the Objection after the word "was" the word "not" be added.*
- 2. That after completion of Para 5 of the Objection the following words be added Actually the same was purchased from the then owner namely Jauhar Chand in the name of Ram KumarJalan (one of Trustees) by the trustees of Seva Sangh Trust for Rs. 12500/- out of the trust fund of Rs. 40000/- collected through contribution from General Publicand the said house and the lands belong to the trust. It is worth to say that Ram Kumar Jalan had beneficial interest in the same and this no fact was also admitted by Ram Kumar Jalan in the Trust Deed No.-2314 of 1949.*
- 3. That in line no.-3 & 4 of para 20 of objection the following words "and had captured of the upper floor of the trust building" be deleted."*

To it, the respondents/applicants filed an objection petition. The respondent no. 9, who had filed an intervention application to be added as opposite party in Miscellaneous Case No. 43 of 2017, also filed an objection petition on 14.12.2019. After hearing the parties, the learned Additional District Judge-XII, Muzaffarpur passed an order dated 28.06.2022 whereby the first two amendments have been allowed but the third amendment has been rejected and the said order is under challenge before this Court.

3. Learned counsel for the petitioner submits that the



impugned order is bad in the eye of law as the learned trial court has failed to appreciate the fact that the amendment sought on behalf of the petitioner is formal in nature and will not change the nature of the case. The learned trial court has further failed to appreciate that the amendment has been sought at the initial stage of trial and is in the interest of justice considering the object of Order VI Rule 17 of the Code. It is settled proposition of law that procedural provisions like amendment of plaint or written statement and limitation should be interpreted to advance the cause of justice and not to defeat it. All the rules and procedures are hand maids of justice and the language employed by the draftsmen of procedural law may be liberal or stringent, but the fact remains that that object of prescribing procedure is to advance the cause of justice. The learned trial court has committed an error by rejecting the third amendment on the ground that it negates admission regarding fact of possession but the said amendment is not going to affect the parties in any manner and it is nothing but seeking correction of factual mistake which occurred while typing the objection petition. Therefore, the part of the impugned order by which the third amendment prayed in the amendment petition filed on behalf of the petitioner has been rejected is not sustainable in



the eyes of law. The learned trial court has wrongly observed that the possession of the applicant has been admitted by the opposite party no. 1/petitioners and the applicants are exonerated from proving their possession. Learned counsel further submits that the property in dispute is a public Trust and the provisions of the Code would not strictly apply. The learned counsel further submits that moreover, the amendment has been sought in the written statement/objection filed by the petitioner/opposite party no. 1 and it is the settled law that Courts adopt far more liberal approach for amendment in written statement than what is adopted for allowing the amendment of plaint and referred to the decision of the Hon'ble Supreme Court in the case of *Sushil Kumar Jain Vs. Manoj Kumar and Anr.* reported in *AIR 2009 SC 2544* especially paragraph no. 12 and 13, wherein the Hon'ble Supreme Court relying on an earlier decision in *Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Anr.* reported in *1983 SCC OnLine SC 340*, while considering the issue regarding admission made by the defendant in the written statement held that admission made by a party may be withdrawn or may be explained. On these grounds the learned counsel submitted that the impugned order is not sustainable and the same needs to be set aside.



4. Learned counsel appearing on behalf of the respondent no. 9 supported the contention of the learned counsel for the petitioner submitting that the impugned order is not sustainable. Learned counsel for the respondent no. 9 further submitted that while rejecting the third amendment, the learned trial court cited the reason that the moment the possession is admitted it gives the right to the applicant and the applicant is exonerated from Proving his possession as mandated by Section 58 of Indian Evidence Act, 1872 but considering the relief sought for, the possession is irrelevant, the only prayer made in the Miscellaneous Case No. 43 of 2017 is for setting aside the notification of Constitution of Management Committee. Under these circumstances, the question of possession does not arise and also does not change the nature of the case. The learned trial court failed to appreciate that the Board is duty bound to constitute a committee for proper management of a public trust since there has been no stay in the matter by any competent court. Moreover, respondent no. 1 to 8 have already filed Title Suit No. 470 of 2012 before the Court of learned Sub Judge, Muzaffarpur for declaration of their Right and Title over the property and also for setting aside the order dated 23.01.2012 passed by the Board declaring the property as public trust



property and the injunction petition filed on behalf of the Respondent Nos. 1 to 8 has been rejected. Possession is not relevant in the matter before the learned trial court though it may be a relevant consideration in the Title Suit No. 470 of 2012 filed by the respondents. Learned counsel further submitted that moreover, the endeavor of the Court should be towards determination of real controversy between the parties and furtherance of justice. A more liberal approach is to be adopted while considering the amendment in the written statement and relied on a decision of the Co-ordinate Bench of this Court passed in ***Hari Shankar Yadav & Ors. Vs. Dakhiya Devi & Anr.*** reported in ***2023 (2) BLJ 600***. Thus, the learned counsel also submitted that the impugned order needs interference by this Court.

5. Learned counsel appearing on behalf of respondent nos. 1-8 vehemently contended that there is no infirmity in the impugned order and the same needs no interference. The learned counsel submitted that admittedly the written statement was filed on 15.03.2019 and after expiry of about two and a half years amendment petition was filed by the petitioner on 15.11.2021 without explaining the delay and after closure of evidence of the answering respondents. Therefore, the



amendment sought by the petitioner/opposite party no. 1 could not be allowed in view of the proviso to Order VI Rule 17 of the Code. Learned counsel further submitted that the amendment sought by the petitioner is not formal in nature and by way of proposed amendment the petitioner wants to withdraw his admission made earlier as the petitioner admitted the possession of the respondents and by this admission valuable right has accrued in favour of the answering respondents and the same cannot be allowed to be withdrawn. Moreover, the amendment petition has been filed after closure of evidence of the answering respondents and the same is clearly in the teeth of proviso to Order VI Rule 17 of the Code. Learned trial court while rejecting the amendment has rightly considered Section 58 of the Indian Evidence Act and observing that admission once made cannot be withdrawn by way of amendment, if such amendment were to be allowed, the same would cause serious prejudice to the answering respondents. Therefore, the third amendment sought by the petitioner is not sustainable in the eyes of law and the learned trial court has rightly rejected the same.

6. Learned counsel referred to the Three Judge Bench decision of the Hon'ble Supreme Court in the case of *Nagindas*



Ramdas Vs. Dalpatram Ichharam @ Brijram and Ors. reported in ***AIR 1974 SC 471*** wherein the Hon'ble Supreme Court held that admissions in pleadings or judicial admission, admissible under s. 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them or constitute a waiver of proof. The Hon'ble Supreme Court further held that they by themselves can be made the foundation of the rights of the parties. Thus, once the petitioner/opposite party no. 1 admitted that heirs of deceased trustee had captured the upper floor of the Trust building, this admission cannot be allowed to be withdrawn.

7. The learned counsel next referred to the decision of Hon'ble Supreme Court in the case of ***Modi Spinning & Weaving Mills Co. Ltd. & Anr. Vs. Ladha Ram & Co.*** reported in ***AIR 1977 SC 680*** wherein the Hon'ble Supreme Court held that though inconsistent pleas can be made in pleadings but if the effect of substitution is not making inconsistent and alternative pleadings but was seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement such amendments could not be allowed. If



such amendments are allowed, the plaintiff would be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants and thus held that the High Court rightly rejected the application for amendment and agreed with the trial court which said that “the repudiation of the clear admission is motivated to deprive the plaintiff of the valuable right accrued to him and it is against law.”

8. Thereafter, learned counsel referred to the decision of *Ram Niranjana Kajaria Vs. Sheo Prakash Kagaria & Ors.* reported in **2015 (10) SCC 203** wherein the Three Judge Bench of the Hon’ble Supreme Court overruled *Panchdeo Narain Srivastava* (supra) holding that the proposition of law that even an admission can be withdrawn as held in *Panchdeo Narain Srivastava* (supra) does not reflect the correct legal position. While agreeing with the position in *Nagindas Ramdas* (supra) and in *Gautam Sarup vs. Leela Jetly and Ors.* reported in **(2008) 7 SCC 85** Hon’ble Supreme Court held that a categorical admission made in the pleadings cannot be permitted to be withdrawn by way of an admission. Thus, the learned counsel submitted that the proposition of *Sushil Kumar Jain* (supra) stands overruled by this decision of the Hon’ble Supreme Court.

9. Lastly, the learned counsel referred to the decision



of *Rajesh Kumar Aggarwal & Ors. Vs. K.K. Modi & Ors.* reported in *AIR 2006 SC 1647* wherein the Hon'ble Supreme Court held that while considering whether an application should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. Thus, the learned counsel submitted that whatever be the merits of the proposed amendment, the same cannot be the ground for its incorporation in the written statement at this stage as while allowing or refusing the amendment the Court is not supposed to look into the merits of the proposed amendment. Thus, the learned counsel submitted that the impugned order passed by the learned trial court is legal and correct and needs to be affirmed.

10. I have given my thoughtful consideration to the rival submissions of the parties and perused the record.

11. The relevant provision is Order VI Rule 17 of the Code which reads as under:

“17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and



all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: 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”

12. The issue before this Court lies under a very narrow compass. The petitioner sought three amendments as described hereinbefore and two such amendments were allowed while the learned trial court rejected the third amendment. Third amendment was sought in paragraph no. 20 of the written objection which in its entirety reads as under:

“That thereafter after full and final enquiry found that the heirs of deceased trustee are interfering in the affairs of the trust property and had captured of the upper floor of the trust building and filed a complain before the opposite party claiming the trust property as their private property and after hearing the parties this opposite party vide order dated 21.03.2012 declared the said property as public trust property and subsequently vide order dated 07.10.2016 settle a scheme under section 32 of Bihar State Religious Trust Act for smooth and fair management of trust property against which the present case has been filed.”

(underlined for emphasis)

The bare perusal of paragraph no. 20 of the written objection makes it clear that in its written objection, the heirs of the deceased were found to be interfering in the affairs of the trust property and it has also been mentioned that they had



captured the upper floor of the trust building. The petitioner now wants to delete the portion wherein it has been mentioned that “had captured of the upper floor of the trust building”

13. Clearly, the possession of the heirs of the deceased trustee has been admitted by the petitioner in its written objection. The learned trial court while rejecting the third amendment has said that “The moment possession is admitted it gives the right to the applicant and the applicant is exonerated from proving his possession as mandated by section 58 of the Indian Evidence Act 1872.” The Hon’ble Supreme Court in the case of **Nagindas Ramdas** (supra) has held as follows:

“From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction, though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself, Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under s. 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a



waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong."

Moreover, in the case of ***Modi Spinning & Weaving Mills Co. Ltd. & Anr.*** (supra) the Hon'ble Supreme Court frowned upon such amendment which sought to displace the plaintiff completely from the admission made by the defendant in the written statement.

14. In the light of the admitted facts and circumstances, there could be no doubt about the petitioner trying to resile from admission made in their written statement and in view of the settled law, such amendment could not be allowed. Recently, in the case of ***Life Insurance Corporation Of India vs Sanjeev Builders Private Limited & Anr.*** reported in ***2022 SCC OnLine SC 1128***, while summarizing the law on the point of amendment, Hon'ble Supreme Court held that all amendments could be allowed unless by the amendment, the parties seeking amendment seek to withdraw any clear admission made by the party which confers a right on the other side.

15. The challenge to the amendment has also be on the ground that the amendments were sought after



commencement of trial but the learned trial court allowed the other amendments after the evidence of the applicant was over and therefore, the amendments were allowed after commencement of trial and allowing the amendments at the later stage has not been challenged by the other side and thus the order to that extent attained finality. But notwithstanding the order allowing other amendments, the fact remains the third amendment is hit by the proviso to Order VI Rule 17 of the Code and no due diligence has been shown for not bringing the amendment prior to commencement of trial.

16. In the light of the discussion made hereinabove, I am of the considered opinion that the learned trial court proceeded in the matter considering the settled proposition of law and rightly applied the same to the facts before it and hence, there is no infirmity in the impugned order dated 28.06.2022 and the same is affirmed.

17. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	AFR
CAV DATE	07.01.2025
Uploading Date	06.02.2025
Transmission Date	N/A

