IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.662 of 2022

==========

1. Smt. Lilawati Devi D/o Late Rajendra Singh alias Inder Lal Singh and W/o Sri Indu Bhushan Sinha, Resident of Village Hasanpura, P.S. Janipur, P.C. Dhibra, District- Patna.
2. Sri Indu Bhushan Sinha S/o Sri Rabindra Nath Sinha, Resident of Village Hasanpura, P.S. Phulwari at present P.S. Janipur, P.O. Dhibra, District- Patna.

... ... Petitioners

Versus

1. Ranglal Paswan @ Khesari Paswan S/o Late Deo Nandan Paswan, Resident of Village Hasanpura, P.S. Phulwari at present P.S. Janipur, P.O. Dhibra, District- Patna.
2. Dhiv Lakhan Paswan Son of Late Harbanshi Paswan, Resident of Village Hasanpura, P.S. Phulwari at present P.S. Janipur, P.O. Dhibra, District- Patna.
3. Shiv Narain Paswan Son of Late Harbanshi Paswan, Resident of Village Hasanpura, P.S. Phulwari at present P.S. Janipur, P.O. Dhibra, District- Patna.
4. Shiv Shankar Paswan Son of Late Harbanshi Paswan, Resident of Village Hasanpura, P.S. Phulwari at present P.S. Janipur, P.O. Dhibra, District- Patna.
5. Jailendra Paswan Son of Late Dukhan Paswan, Resident of Village Hasanpura, P.S. Phulwari at present P.S. Janipur, P.O. Dhibra, District- Patna.
6. Gorakh Paswan Son of Late Dukhan Paswan, Resident of Village Hasanpura, P.S. Phulwari at present P.S. Janipur, P.O. Dhibra, District- Patna.
7. Jaibindra Paswan Son of Late Dukhan Paswan, Resident of Village Hasanpura, P.S. Phulwari at present P.S. Janipur, P.O. Dhibra, District- Patna.
8. Jatashu Paswan @ Inderdeo Paswan Son of Late Diplal Paswan, Resident of Village Hasanpura, P.S. Phulwari at present P.S. Janipur, P.O. Dhibra, District- Patna.
9. Sukhlal Paswan @ Lakhandeo Paswan Son of Late Diplal Paswan, Resident of Village Hasanpura, P.S. Phulwari at present P.S. Janipur, P.O. Dhibra, District- Patna.
10. Tulsi Paswan Son of Late Diplal Paswan, Resident of Village Hasanpura, P.S. Phulwari at present P.S. Janipur, P.O. Dhibra, District- Patna.
11. Dukh Haran Paswan Son of Late Bhimlal Paswan, Resident of Village Hasanpura, P.S. Phulwari at present P.S. Janipur, P.O. Dhibra, District- Patna.

... ... Respondents

==========

Appearance :
For the Petitioner/s : Mr. Umesh Prasad Singh, Sr. Advocate
Mr. Kumar Gaurav, Advocate
For the Resp. No.7 : Mr. Jitendra Kumar Bharti, Advocate
Mr. Uday Prasad, Advocate
Mr. Vinit Kumar, Advocate

==========

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date :16-05-2025

The present civil miscellaneous petition has been filed to quash the order dated 02.08.2022 passed by the learned Sub Judge-IX, Patna in Title Suit No. 111 of 2004, whereby and whereunder the learned trial court allowed the amendment of written statement under Order VI Rule-17 r/w Section 151 of the Code of Civil Procedure, 1908 (for short 'the Code') at the instance of defendant no. 7.

02. Briefly stated, the facts of the case are that the petitioners are plaintiffs of Title Suit No. 111 of 2004 who have sought adjudication of the title of the plaintiffs and non-title of the defendants over the suit land described in Schedule-1 of the plaint. Further, a decree for recovery of possession of the suit property of Schedule-1 was also sought in favour of the plaintiff no. 1 and against the defendants. Interim injunction and other reliefs were also sought in the suit. As per plaintiffs' case, one Dewan Singh purchased 53 decimal land of Plot No.38 by way of registered sale deed dated 30.04.1937 from one Bimal Paswan and his five sons and came in possession of the said

land. Dewan Singh gifted the land in dispute along with other lands by way of registered deed of gift dated 20.06.1973 to his three daughters and put them in exclusive possession as Dewan Singh had no son. Dewan Singh died in 1975 and his three daughters partitioned the property gifted to them under a registered deed of gift of dated 20.06.1973. After getting possession, the names of Kunti Devi and other two sisters were mutated in the revenue records of the State. The suit land of Plot No. 38 having area 53 decimal along with other land were allotted to Kunti Devi who showed her willingness to sell her land for a sum of Rs. 50,000/- and, accordingly, plaintiff no. 1 paid full consideration amount of Rs. 50,000/- to plaintiff no. 2 who was authorized by Kunti Devi to execute the sale deed in favour of plaintiff no. 1 by executing a registered deed of general power of attorney in favour of plaintiff no. 2. Accordingly, plaintiff no. 2 registered sale deed dated 16.10.2001 in favour of plaintiff no. 1 in respect of suit land and other lands as well and plaintiff no. 1 was put to the exclusive possession of his purchased land. Plaintiff No. 1 filed an application for substitution of her name of the basis of sale deed dated 16.10.2001, which was allowed for *Khata* which was existing in the name of Kunti Devi. Plaintiffs applied before the

Circle Officer, Phulwarisharif for mutation of name of plaintiff no. 1 and then, they came to know that name of Harbanshi Paswan was recorded in Register-II and they filed an application for cancellation of name of Harbanshi Paswan in respect of suit land which was registered as Misc. Case No. 04 of 2002. Finally, the name of Harbanshi Paswan was removed and name of Kunti Devi was recorded vide order dated 07.03.2003 and this order was not challenged by any of the defendants. However, the plaintiffs/petitioners claimed that defendants taking advantage of their numerical strength entered into conspiracy with each other and went to suit land and terrorized the labourers of the plaintiffs who were harvesting the crop and they started claiming title over the land which has cast a cloud over the right of the plaintiff no. 1 and hence the plaintiffs filed the suit for above noted reliefs.

03. The defendant nos. 1 to 4, 7, 9 and 11 contested the claim of the plaintiffs by filing their joint written statement denying the averments made in the plaint. The defendants submitted that Bimal Paswan and his sons never executed the sale deed on 30.04.1937 nor Dewan Singh came in possession of land. The mutation in the name of Dewan Singh was collusive and as Dewan Singh had no right and interest in the

land, there was no reason for him to execute the deed of gift dated 20.06.1973. Similarly, the deed of partition dated 22.06.1976 is showy and collusive document. Thus, the defendants submitted that the plaintiffs have brought the suit on the basis of wrong and baseless fact and the defendants denied all the statement made in the plaint. It also transpires that an amendment application of the defendants has been allowed vide order dated 10.05.2012 by the learned trial court. Thereafter, issues were framed and the plaintiffs recorded their evidence and the matter came up for evidence of defendants. On 02.11.2021, defendant no. 7 filed an application for amendment of written statement. A rejoinder to the said application was filed by the plaintiffs and vide order dated 21.04.2022, the said application was rejected by the learned trial court. Thereafter, the defendant no. 7 filed another petition under Order VI Rule-17 and Section 151 of the Code to amend the written statement on same and similar ground and the said application was allowed by the learned trial court vide order dated 02.08.2022. This order is under challenge before this Court.

04. Learned senior counsel appearing on behalf of the petitioners submitted that order dated 02.08.2022 passed by the learned trial court is contrary to the provisions of law and has

been passed without jurisdiction. The learned senior counsel submitted that the impugned order has been passed against the established principles of *res judicata* and ignoring the proviso to Order-VI Rule 17 of the Code. Learned senior counsel further submitted that this was the third attempt of the defendants to make amendment in the written statement. In the year 2012, the application for amendment of the defendants was allowed. However, further amendment was sought in the year 2021 and the same was rejected. On similar ground, subsequent amendment application has been filed and the same has been allowed vide order dated 02.08.2022. Learned senior counsel further submitted that in 2021, the defendant sought the following amendment: *"...Bhimal Paswan son of Late Ram Dhani Paswan purchased land from Dewan Singh son of Late Babu Gauri Sharan Singh in 1938 by Khista Bay Kalami on the consideration of Rs. 98/- only...",* In the petition dated 13.05.2022, Para-3 reads as under:

> *"That Bimal Paswan son of Late Ram Dhani Paswan purchased land from Dewan Singh son of Late Babu Gauri Charan Singh in 1938 by Khista Baikalami on the consideration price of Rs. 98?- only ...."*

Learned senior counsel for the petitioner submitted

that when the application dated 02.11.2021 was filed, the defendants have not produced even photocopy of *Khista Baykalami* of 1938. However, when the amendment application was filed for the second time in 2022, the defendant no. 7 came out with a photocopy of *Khista Baykalami* said to be of the year 1938, but did not produce the original of the same. Even then, the learned trial court allowed the amendment application on the basis of an inadmissible document. The learned trial court failed to appreciate that so called *Khista Baykalami* deed was not referred to in the written statement filed in December, 2004 and despite the fact that document was in custody of the defendant, they did not pray for amendment in 2012, when their amendment application was allowed to add other facts. Thereafter, the document, on the basis of which, the amendment has been sought, was not produced on 02.11.2021. Now, the photocopy of the said document is being produced, which is an inadmissible piece of evidence. The fraudulent nature of document is also apparent from the fact that the same land was purchased in the year 1937 by Dewan Singh for consideration amount of Rs. 2,00/- but in the subsequent year, the defendant has claimed that Dewan Singh sold the same land for consideration amount of Rs. 98/- only. This fact, in itself, shows

that the unregistered deed is the creation of defendant no. 7.

05. Learned senior counsel referred to the decision of Hon'ble Supreme Court in the case of ***Satyadhyan Ghosal vs. Deorajin Debi***, reported in ***AIR 1960 SC 941,*** wherein the Hon'ble Supreme Court did not find the interlocutory application which was filed subsequently on the same and similar ground to be maintainable and held that it was barred by the principle of *res judicata.* Learned senior counsel further submitted that the Hon'ble Supreme Court held that the principle of *res judicata* applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court, having at an earlier stage decided a matter in one way, will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. Learned senior counsel next submitted that the amendment was also barred under the proviso to Order-VI, Rule-17 of the Code as the amendments were sought after 18 years and no due diligence has been shown by the defendants as to why they did not bring the amendment earlier. The amendment sought has been highly belated. Learned senior counsel further submitted that the Hon'ble Supreme Court in the case of ***Vijay Hathising Shah vs. Gitaben Parshottamdas Mukhi,*** reported in ***(2019) 5***

SCC 360 has deprecated the allowing of amendments at such highly belated stage. Learned senior counsel next referred to the decision of Hon'ble Supreme Court in the case of ***Pandit Malhari Mahale vs. Monika Pandit Mahale***, reported in ***(2020) 11 SCC 549***, wherein it has been held the amendment could not have been considered unless the Court returned a finding that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. Learned senior counsel further submitted that the defendants have failed to show any due diligence for not bringing the amendment prior to commencement of trial and hence, the amendment is hit by the proviso to Order-VI Rule-17 of the Code. Learned senior counsel further submitted that moreover, it has been the case of the defendants that Bimal Paswan and his five sons never executed any sale deed in favour of Dewan Singh in 1937 and if this was the fact, then as per the defendants, Dewan Singh had not acquired any right, title and interest in the land and as such, there was no occasion for the ancestor of defendant no. 7 to repurchase the land from Dewan Singh acknowledging his right to the land for Rs. 98/- vide *Khista Baikalami/*unregistered deed dated 10.05.1983. This stand of the defendant no. 7 is contrary to the statement made in his written statement for not

recognizing the right and title of Dewan Singh. Therefore, defendant no.7 has tried to make out an entirely new case. Thus, learned senior counsel submitted that the impugned order suffers from a number of infirmity and error of jurisdiction of the learned trial court and hence, the same needs interference by this Court.

06. Learned counsel appearing on behalf of respondent no. 7 opposed the contention of the learned senior counsel for the petitioners. Learned counsel for the defendant/respondent no. 7 submitted that suit land of Schedule-1 of the plaint is the self acquired property of grandfather of defendant no. 7, namely Bimal Paswan, who acquired the same through sale deed dated 10.05.1938 from Dewan Singh after payment of valuable consideration money. Bimal Paswan had been paying rent to *zamindar* with respect to the suit land and after vesting of the *zamindari* in the name of State of Bihar, the name of Harbanshi Paswan S/o Late Bimal Paswan was mutated in the *Serista* of State of Bihar under the provisions of Bihar Land Reforms Act with respect to the suit land along with land of *Khata* No. 34 C.S. Plot No. 167 area 28 decimal and other lands. Since then, Harbanshi Paswan has been paying the rent to the State of Bihar. Learned counsel further submitted that the

descendants of Bimal Paswan partitioned the suit land along with other lands through *Panchnama* dated 20.10.2007.

07. Learned counsel for the respondent no. 7 further submitted that there could be no applicability of principle of *res judicata* in the present facts and circumstances as on 02.11.2021, defendant no. 7 had filed the petition under Order VIII Rule 2 r/w Section 151 of the Code, but the same was with regard to pleading and the defendant no. 7 sought declaration of title in his favour. The said petition was dismissed by the learned trial court on the ground that the defendant no. 7 failed to furnish any details about the proposed amendment. Learned counsel further submitted that earlier the application for amendment was rejected vide order dated 21.04.2022 for the reason that the defendant no. 7 has not filed the application under the relevant provisions of the Code and proposed amendments were not mentioned. Learned counsel further submitted that the amendment in written statement is simple in nature and is with respect to suit land and does not change the nature of the suit and is necessary for the purpose of determining the real controversy between the parties. Learned counsel further submitted that the defendant no. 7 did not withdraw any admission and has not added any new fact in his

written statement. For this reason, it is incorrect to say that the amendment dated 02.08.2022 will change the nature of the suit. The amendment is more or less clarificatory in nature and is with regard to facts of the subject matter of dispute. The learned trial court, considering all these facts, imposed cost of Rs. 5,000/- upon defendant no. 7 before allowing his application for amendment. Therefore, the impugned order is just and proper and does not need any interference by this Court.

08. I have given my thoughtful consideration to the rival submission of the parties and perused the record. Order VI Rule 17 of the CPC 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."*

09. The aforesaid provision makes it clear that amendment brought subsequent to commencement of trial

requires showing of due diligence on part of the party who is seeking the amendment that the amendment could not have been brought earlier.

10. The petitioners have assailed the impugned order on the ground that as the earlier amendment application was rejected, the amendment sought subsequently, was barred by principle of *res judicata.* The respondents have countered this claim by saying that their earlier application for amendment was not disposed of on merit and it was filed under wrong provision and without furnishing the proposed amendment. If the said application was rejected, there could be no applicability of principles of *res judicata*. If the earlier application was not disposed of on merits, the subsequent application filed with same or similar prayer deserves to be disposed of on merits and I am of the opinion, that the subsequent application would not be barred under the principles of *res judicata.*

11. The second ground taken by the petitioners for assailing the order is that the amendment, which was sought, was based on a document for which original was not filed and only a photocopy has been filed and the document, *prima facie,* appears to be fraudulent. But, this contention of the petitioners is related to the merits of the amendment and while allowing the

amendment, the court is not supposed to go into the merits of the amendment. Further, it has also been submitted that the defendants would be contradicting their stand as they are denying the sale deed of 1937 executed by Bimal Paswan and his sons in favour of Dewan Singh and subsequently, claiming that ancestor of the defendant had purchased the same property from Dewan Singh.

12. Further, the petitioners have assailed the amendment in the written statement on the ground of delay. It has been submitted that after amendment in the Code in the year 2003, by which a proviso has been added in Order-VI Rule-17 of the Code that unless the party seeking amendment would show that despite due diligence, the party could not have raised the matter before the commencement of trial, the amendment shall not be allowed. As the defendant no. 7 has failed to show any due diligence for not seeking the amendment earlier and prior to commencement of trial, the amendment is hit by the proviso to Order-VI Rule-17 and could not be allowed.

13. It is settled law that the commencement of trial has different connotation in the facts and circumstances of each case. The Hon'ble Supreme Court in the case of ***Baldev Singh & Ors. vs. Manohar Singh & Anr.*** reported in ***(2006) 6 SCC***

498 has held that the commencement of trial as used in proviso to Order VI Rule 17 of the Code must be understood in limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and adducing of arguments. Admittedly, the present case is at the stage of evidence of defendants.

14. Now, coming to the facts of the case, the amendment has been sought by defendant no. 7 after closure of evidence of the plaintiffs. The application filed by the defendant no. 7 seeking amendment does not disclose any due diligence or for that matter any reason for not bringing the amendment before commencement of trial. The Hon'ble Supreme Court in the case of ***Vidyabai v. Padmalatha,*** reported in ***(2009) 2 SCC 409*** in Paragraphs 15, 19 and 20 held as under:

> "***15.*** *We may notice that in Ajendraprasadji N. Pandey v. Swami Keshavprakeshdasji N. [(2006) 12 SCC 1] this Court noticed the decision of this Court in Kailash [(2005) 4 SCC 480] to hold: (Ajendraprasadji case [(2006) 12 SCC 1] , SCC p. 13, paras 35-36)*
>
> *"35. By Act 46 of 1999, there was a sweeping amendment by which Rules 17 and 18 were wholly omitted so that an amendment itself was not permissible, although sometimes effort was made to rely on Section 148 for extension of time for any purpose.*
>
> *36. Ultimately, to strike a balance*

the legislature applied its mind and reintroduced Rule 17 by Act 22 of 2002 w.e.f. 1-7-2002. It had a provision permitting amendment in the first part which said that the court may at any stage permit amendment as described therein. But it also had a total bar introduced by a proviso which prevented any application for amendment to be allowed after the trial had commenced unless the court came to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial. It is this proviso which falls for consideration."

This Court also noticed Salem Advocate Bar Assn. v. Union of India [(2005) 6 SCC 344] to hold: (Ajendraprasadji case [(2006) 12 SCC 1] , SCC pp. 14-15, paras 41-43)

"41. We have carefully considered the submissions made by the respective Senior Counsel appearing for the respective parties. We have also carefully perused the pleadings, annexures, various orders passed by the courts below, the High Court and of this Court. In the counter-affidavit filed by Respondent 1, various dates of hearing with reference to the proceedings taken before the Court has been elaborately spelt out which in our opinion, would show that the appellant is precluded by the proviso to rule in question from seeking relief by asking for amendment of his pleadings.

42. It is to be noted that the provisions of Order 6 Rule 17 CPC have been substantially amended by the CPC (Amendment) Act, 2002.

43. Under the proviso no application for amendment shall be allowed after the

trial has commenced, unless in spite of due diligence, the matter could not be raised before the commencement of trial. It is submitted, that after the trial of the case has commenced, no application of pleading shall be allowed unless the above requirement is satisfied. The amended Order 6 Rule 17 was due to the recommendation of the Law Commission since Order (sic Rule) 17, as it existed prior to the amendment, was invoked by parties interested in delaying the trial. That to shorten the litigation and speed up disposal of suits, amendment was made by the amending Act, 1999, deleting Rule 17 from the Code. This evoked much controversy/hesitation all over the country and also leading to boycott of courts and, therefore, by the Civil Procedure Code (Amendment) Act, 2002, provision has been restored by recognising the power of the court to grant amendment, however, with certain limitation which is contained in the new proviso added to the rule. The details furnished below will go to show as to how the facts of the present case show that the matters which are sought to be raised by way of amendment by the appellants were well within their knowledge on their court case, and manifests the absence of due diligence on the part of the appellants disentitling them to relief."

The ratio in Kailash [(2005) 4 SCC 480] was reiterated stating that the trial is deemed to commence when the issues are settled and the case is set down for recording of evidence.

***19.** It is the 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.*
>
> ***20.** In Salem Advocate Bar Assn. [(2005) 6 SCC 344] this Court has upheld the validity of the said proviso. In any event, the constitutionality of the said provision is not in question before us nor we in this appeal are required to go into the said question. Furthermore, the judgment of the High Court does not satisfy the test of judicial review. It has not been found that the learned trial Judge exceeded its jurisdiction in passing the order impugned before it. It has also not been found that any error of law has been committed by it. The High Court did not deal with the contentions raised before it. It has not applied its mind on the jurisdictional issue. The impugned judgment, therefore, cannot be sustained, which is set aside accordingly."*

15. Thus, it is evident that proviso introduced in Order-VI Rule 17 of the Code has put fetters on the exercise of jurisdiction of the court and amendment after commencement of trial could not be allowed unless due diligence is shown by the parties.

16. Further, in the case of ***J. Samuel v. Gattu Mahesh,*** reported in ***(2012) 2 SCC 300,*** the Hon'ble Supreme

Court held that a party requesting a relief stemming out of a claim is required to exercise due diligence and it is a requirement which cannot be dispensed with. The term “due diligence” determines the scope of a party's constructive knowledge, claim and is very critical to the outcome of the suit. Further, clarifying the meaning of “due diligence”, the Hon’ble Supreme Court held in Paragraph-21 as under:

> *“21. In the given facts, there is a clear lack of “due diligence” and the mistake committed certainly does not come within the preview of a typographical error. The term “typographical error” is defined as a mistake made in the printed/typed material during a printing/typing process. The term includes errors due to mechanical failure or slips of the hand or finger, but usually excludes errors of ignorance. Therefore, the act of neglecting to perform an action which one has an obligation to do cannot be called as a typographical error. As a consequence the plea of typographical error cannot be entertained in this regard since the situation is of lack of due diligence wherein such amendment is impliedly barred under the Code.”*

17. The Hon’ble Supreme Court in the case of

Revajeetu Builders & Developers v. Narayanaswamy & Sons, reported in ***(2009) 10 SCC 84*** observed that the decision on an application made under Order 6 Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner and concluded with observation that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments. (emphasis supplied)

18. The observations made by the Hon'ble Supreme Court in the decisions of ***Vijay Hathising Shah*** (supra), ***Pandit Malhari Mahale*** (supra), ***Vidyabai*** (supra), ***J. Samuel*** (supra) and ***Revajeetu Builders & Developers*** (supra) are quite apt in the facts and circumstances of the present case.

19. The defendant no. 7 slept over the matter and did not seek the amendment when he filed the written statement or even prior to settlement of the issues. Further, filing of application under wrong provision but with prayer to incorporate the amendment also shows the defendant no. 7 was never serious in pursuing the matter. The facts as disclosed from the record also point to the delaying tendency of the defendant and it could be safely concluded that the defendants want to

delay the proceeding. Further, taking inconsistent and contradictory plea in the amendment also shows the frivolous nature of the amendment.

20. The observation of Hon'ble Supreme Court in the case of ***Revajeetu Builders & Developers*** (supra) is quite illuminating in Paragraph-31 which reads as under:

> ***"31.*** *In our considered view, Order 6 Rule 17 is one of the important provisions of CPC, but we have no hesitation in also observing that this is one of the most misused provision of the Code for dragging the proceedings indefinitely, particularly in the Indian courts which are otherwise heavily overburdened with the pending cases. All civil courts ordinarily have a long list of cases, therefore, the courts are compelled to grant long dates which causes delay in disposal of the cases. The applications for amendment lead to further delay in disposal of the cases."*

21. Therefore, in the light of discussion made here-in-before, I have no hesitation in holding that the learned trial court has exceeded its jurisdiction in allowing the amendment by passing the impugned order dated 02.08.2022. The said order has been passed against the specific provision of Order-VI Rule-17 of the Code as an embargo has been put on exercise of jurisdiction by the court under the proviso to Order-VI Rule-17

of the Code. But the express provision has not at all been considered by the learned trial court. This makes the impugned order bad and not sustainable. Hence, the impugned order dated 02.08.2022 is set aside.

22. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	27.02.2025
Uploading Date	16.05.2025
Transmission Date	NA