

Arun Vs. Subhash

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Court : Madhya Pradesh

Decided On : Apr-26-2013

Appellant : Arun

Respondent : Subhash

Advocate for Pet/Ap. : Shri. S.K.Agrawal, Shri. Piyush Bhatnagar

Judgement :

1 W.P.No.6348/2013 26/4/2013: Shri S.K.Agrawal with Shri Piyush Bhatnagar, learned counsel for the petitioner.

Challenge in this petition under Article 227 of the Constitution is made to an interlocutory order dated 24.1.2013 passed by 1st Civil Judge, Class II, Betul in Civil Suit No.35A/ 2012.

Petitioner is defendant and wanted to amend the written statement at the stage when the evidence of the defendant was in progress.

The written statement was filed by the petitioner on 8.11.2012 and as application for amendment was filed belatedly and no justification for the delay was coming, the application for amendment has been rejected.

Even though Shri S.K.Agrawal, learned counsel for the petitioner tried to emphasize that petitioner acquired knowledge about facts mentioned in the application only belatedly, the requirement of Order 6 Rule 17 CPC contemplates

that no application for amendment shall be allowed after the trial has commenced until the Court comes to the conclusion that inspite of due diligence petitioner could not have raise the matter before commencement of trial.

This is the requirement of law and in the present case except for contending that petitioner came to knot about the fact belatedly, nothing is pointed out to show discharge of due diligence and as to how the requirement of proviso to Order 6 Rule 17 CPC is met with and therefore, the application for amendment to be allowed.

Once the requirement of law as indicated herein above is not met with and the amendment application is filed at a stage of evidence of 2 defendant after the trial is commenced, the Supreme Court has consistently held that such an amendment cannot be allowed.

In view of the above, I am of the considered view that in rejecting the application for amendment in the facts and circumstances of the present case, learned Court has not committed any error warranting interference.

Petition is therefore, dismissed with liberty to the petitioner to challenge the action, if required after the suit is finally decided.

Petition is accordingly dismissed.

(Rajendra MeNo.) Judge Mrs.mishra

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