

**Subash Kapila Vs. Devi Ram**

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**Court :** Himachal Pradesh

**Decided On :** Apr-28-2011

**Judge :** Deepak Gupta, J.

**Acts :** Code of Civil Procedure (CPC) (C.P.C) - Order 1 Rule 10(2)

**Appeal No. :** CMPMO No. 46 of 2011

**Appellant :** Subash Kapila

**Respondent :** Devi Ram

**Advocate for Def. :** Mr. S.C. Sharma, Adv.

**Advocate for Pet/Ap. :** Mrs. Anjana Khan; Mr. Imran Khan, Adv.

**Judgement :**

1. By means of this petition, the petitioner has challenged the order dated 29.11.2010 passed by the learned Civil Judge (Jr. Division) Court No. (VII), Shimla whereby he rejected the application filed by the petitioner for impleading the Municipal Corporation, Shimla as defendant No.2 in the suit.

2. Briefly stated the facts of the case are that the petitioner filed a suit praying that a decree for permanent prohibitory injunction be passed against the defendantrespondent. He also claimed for a decree of mandatory injunction. The main grievance of the petitioner was that construction has not been carried out as

per the sanctioned plans and is being carried out in violation of the Municipal norms. The defendant No.1 took preliminary objection that the Municipal Corporation is a necessary party to the suit. Thereafter the replication was filed and the case was listed for petitioner's evidence on a couple of occasions and it was only thereafter that the application was filed. The application was contested only on the ground of delay and the learned Trial Court held that it was a delaying tactics and rejected the application.

3. The suit was filed only in the year 2009 and the application was filed after the issues were framed. It may be true, that there is delay in filing the application as the petitioner took 2-3 opportunities to lead evidence, but such an application cannot be rejected only on this ground especially when the respondent can be compensated in terms of costs. In fact, Order 1 Rule 10(2) CPC provides that the Courts may at any stage of the proceedings with or without application of the parties order the name of any parties to be impleaded in the suit. The power is very wide and therefore, the learned Trial Court should have exercised such powers in favour of the petitioner especially when it was the objection of the defendant No.1 that the Municipal Corporation is a necessary party to the suit.

4. In view of the above discussion, the petition is allowed and the application filed by the petitioner under Order 1 Rule 10 (2) CPC for impleading the Municipal Corporation, Shimla as defendant No.2 is allowed. This is, however, subject to payment of Rs. 1,000/- as costs to compensate defendant No.1 for delay in filing the application.

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