

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

OP(C).No. 4108 of 2012 (O)

AGAINST THE ORDER IN IA NO.3102/2012 IN OS NO.282/2010 OF ADDITIONAL
SUBORDINATE JUDGE'S COURT, IRINJALAKUDA DATED 07.09.2012

PETITIONER(S):

STATE OF KERALA
REP. BY DISTRICT COLLECTOR, THRISSUR.

BY GOVERNMENT PLEADER SHRI P.K.ABDUL RAHMAN

RESPONDENT(S):

M/S.VAIGAI THREAD PROCESSORS (P) LTD.
MURINGOOR THEKKUMURI VILLAGE, MUKUNDAPURAM TALUK
REP. BY DIRECTOR, V.J. PAUL.

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
BY ADV. SRI.P.GOPINATH
BY ADV. SRI.P.BENNY THOMAS
BY ADV. SRI.K.JOHN MATHAI
BY ADV. SRI.JOSON MANAVALAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 21-07-2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

OP(C) NO.4108/2012

APPENDIX

PETITIONER(S) EXHIBITS

EXT.P1 A TRUE COPY OF THE PLAINT

EXT.P2 A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANT.

EXT.P3 A TRUE COPY OF I.A. 31-2/12 FILED BY THE DEFENDANTS TO AMEND THE WRITTEN STATEMENT.

EXT.P4 A TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT.

EXT.P5 A TRUE COPY OF THE ORDER OF THE ADDITIONAL SUB JUDGE, IRINJALAKUDA DATED 7-9-12.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

A.HARIPRASAD, J.

O.P.(C) No.4108 of 2012

Dated this the 21st day of July, 2015

JUDGMENT

By Ext.P5 order the trial court rejected a prayer to amend the written statement in a suit for recovery of money. Defendant State is the petitioner. Plaintiff company is the respondent. The suit is one for recovery of money filed by the company against the State. The petitioner State filed a written statement and the trial in the suit had started. Thereafter the amendment application was filed by the petitioner. Court below as per Ext.P5 order dismissed the application finding no reason for filing the application belatedly and also that the amendment, if allowed, would amount to permitting the petitioner to raise a counter claim far beyond the time prescribed under Order VIII Rule 6 of the Code of Civil Procedure (in short, "CPC").

2. Heard the learned Government Pleader for the petitioner State (defendant) and the learned counsel appearing for the respondent company (plaintiff).

3. Ext.P1 is the plaint and Ext.P2 is the written statement. Ext.P3

is the application for amendment filed by the petitioner. On perusal of Ext.P3, it can be seen that the petitioner had claimed an amount of ₹18,68,77,460/- towards arrears of rent due from the respondent. The plaint claim is only ₹4,10,22,240/- with costs and future interest. Admittedly, the amount shown in the amendment application is much higher than the plaint claim. Court below is perfectly right in holding that a plea of set off cannot be permitted to be raised by the defendant much after filing the written statement and after commencement of trial. Order VIII Rule 6 CPC says that a plea of set off can be claimed by the defendant only at the first hearing of the suit and not afterwards. The defendant can put forward a claim to set off subsequent to the said time only with the permission of the court. It is indisputable that for seeking permission, sufficient reasons should have been shown. The court below is legally correct in holding that no such reason has been shown for permitting the petitioner to raise a claim of set off at that distance of time. Not only that, the amount shown in the amendment application is much higher than the plaint claim and on that score also a set off cannot be allowed as it may assume the character of a counter claim.

4. Learned Government Pleader submitted that the court below did not consider the plea of defendant State regarding the necessity to

bringing out relevant facts essential for adjudication of the dispute between the parties. It is mentioned in Ext.P3 affidavit that certain facts came to light only on perusal of files pertaining to the issue. Those facts could not be included in the original written statement as they were known after filing of the written statement. Learned counsel for the respondent opposed these contentions saying that the affidavit do not show any valid reason for not mentioning the relevant facts in the original written statement. On perusal of the impugned order, it is discernible that the court below rejected the petition mainly for two reasons. First of all, it found that a claim for set off cannot be raised after the prescribed time. Secondly, the plaintiff failed to show any reason for seeking amendment after starting the trial. The Supreme Court in **Salem Advocate Bar Association, Tamil Nadu v. Union of India (AIR 2005 SC 3353)**, in paragraph 27 held as follows:

“Order VI Rule 17 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to

some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision.”

5. It is true that the application for amendment was filed after starting evidence on the side of the respondent/plaintiff. But, the court below should have considered that the facts now sought to be incorporated in the written statement by way of amendment are essential for proper adjudication of the case. Not only that, denial of such pleas will result in prolongation of the litigation. I find no reason to reject the incorporation of additional facts in the written statement by way of amendment. It is made clear that the plea of set off sought to be raised in the written statement cannot be legally permitted.

In the result, the original petition is allowed. Ext.P5 impugned order is set aside. Court below is directed to permit the petitioner/defendant to amend the written statement as sought for in Ext.P3 application. The plea of set off is legally incompetent. The respondent/plaintiff shall file replication, if any, or amend the plaint, if they wish, within a period of one month from the date of carrying out the amendment. The court below shall

dispose of the case on merits as expeditiously, at any rate within a period of six months from the date of production of a copy of this judgment. Parties are directed to appear before the court below on 10.08.2015.

A. HARIPRASAD, JUDGE.

cks