

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION No.2338 of 2015

ORDER:

This revision, under Article 227 of the Constitution of India, is preferred against the order passed by the Principal Junior Civil Judge, Chodavaram in I.A. No.457 of 2014 in O.S. No.7 of 2012 dated 28.01.2015. I.A. No.457 of 2015 was filed by the petitioner-defendant seeking amendment of the pleadings i.e., written statement. In the order under revision, the Court below held that the amendment sought was for insertion of a paragraph and for deletion of a sentence in the written statement; this was not a typographical error; while courts should be liberal in permitting amendment of the pleadings, it should be ensured that no prejudice is caused to the other parties; the proposed amendment sought to replace the written statement filed earlier; the petitioner had failed to prove due diligence on his part for not filing the petition before commencement of trial; and prejudice would be caused to the plaintiff if the same was allowed.

The proviso to Order 6 Rule 17 CPC stipulates that no application for amendment shall be allowed after trial has commenced, unless the Court comes to the conclusion that, despite exercise of due diligence, the party could not raise the plea before commencement of trial. It is not in dispute that, in the present case, trial has commenced.

The only question is whether the petitioner herein has shown due diligence in seeking amendment of the pleadings. In the affidavit filed in support of the I.A, the petitioner merely contended that, at the time of preparation of the written statement, there was a wrong mention in one of the paragraphs; the said mistakes were only typographical, and not wilful; and he would suffer irreparable loss and injury if the pleadings were not permitted to be amended. There is no whisper in the affidavit,

much less an assertion, that, despite due diligence, the petitioner was unable to raise this plea before commencement of trial.

The Court below was justified in holding that the requirement of the proviso, to Order 6 Rule 17 CPC, was not satisfied, and that the petitioner had failed to prove due diligence on his part.

The order under revision does not suffer from any patent illegality necessitating exercise of jurisdiction under Article 227 of the Constitution of India. The Civil Revision Petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

RAMESH RANGANATHAN, J

Date: 03.07.2015

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