

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.2806 of 2014

ORDER:

This Revision Petition is filed under Article 227 of the Constitution of India challenging the Order dt.04-08-2014 in I.A.No.170 of 2013 in O.S.No.116 of 2010 of the X Additional District Judge, Tirupati.

2. Petitioner herein is the defendant in the above suit. The respondent/plaintiff filed the suit for recovery of money against the petitioner on the basis of a promissory note allegedly executed by the petitioner. After receiving summons, petitioner filed the written statement taking the plea that the suit promissory note is a forgery. Thereafter, issues were framed and trial commenced. The affidavit in lieu of chief examination of the plaintiff's witness was filed on 20-12-2012. Exhibits on behalf of P.W.1 were marked and the matter was posted for cross examination of P.W.1. Thus, the trial had commenced in that suit.
3. Thereafter, the petitioner filed an application I.A.No.170 of 2013 under Order VI Rule 17 CPC to amend the written statement to incorporate the pleading that the signature in the suit promissory note is different from the signature normally put by the petitioner. In the affidavit filed in support of this application, it is stated that by over sight, this fact was not stated by the earlier advocate; so he changed his advocate; and therefore, he is entitled to raise this plea also by amending the written statement.
4. Counter affidavit was filed by the respondent opposing this

application contending that such amendment is barred by the proviso to Order VI Rule 17 CPC. It is further contended that there was no due diligence on the part of the petitioner and petitioner could have raised this issue in his original written statement or at any rate by way of amendment before commencement of trial. Once the trial has commenced, he cannot be allowed to amend the written statement.

5. By Order dt.04-08-2014, the Court below dismissed this application. It held that in the present case, not only was the chief examination affidavit of P.W.1 filed, but the witness was present, his chief examination was recorded; documents were marked; and the matter was posted for cross examination of P.W.1. It held that these facts indicate that the trial has commenced and once the trial has commenced, unless the defendant shows that despite due diligence, he was not able to seek the amendment prior to commencement of trial, he cannot be allowed to amend the written statement.
6. Questioning the same, this Revision Petition is filed.
7. Heard Sri P.Jagadish Chandra Prasad, learned counsel for the petitioner and Sri P.Hema Chandra, learned counsel for the respondent.
8. Learned counsel for the petitioner contended that on account of over sight, the previous advocate did not raise this plea and no prejudice would be caused because the additional plea is consistent with the original plea of forgery taken by the petitioner.
9. Learned counsel for the respondent on the other hand

contends that the order of the Court below is correct and does not warrant interference by this Court in exercising of the power under Article 227 of the Constitution of India.

10. Although the Order VI Rule 17 CPC permits amendment of pleadings, by Act 22 of 2002, a proviso has been added to the said provision which directs that no application for amendment of pleading 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.

11. Admittedly the affidavit in lieu of chief examination of P.W.1 was filed on 20-12-2012. He was examined in chief on that day. Exhibits were marked and the matter was posted for his cross examination. Thus, the trial has commenced in the suit. In the affidavit filed in support of the amendment application, the only plea raised by the petitioner is that his previous counsel by oversight had not mentioned the fact that the signature in the suit promissory note is different from the signature normally put by the petitioner. The suit was filed in the year 2010 and the application for amendment was filed on 04-04-2013. Petitioner had ample time and opportunity to take this plea before the trial commenced. It cannot be said that the petitioner, in spite of due diligence, was disabled from raising the plea before the commencement of trial. Therefore, the Court below was right in dismissing I.A.No.170 of 2013.

12. So I do not find any error of jurisdiction in the order of the Court below warranting interference by this Court under Article 227 of the Constitution of India.

13. Accordingly, the Civil Revision Petition is dismissed. No costs.

14. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-06-2015

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