

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.3569 of 2014

ORDER :

This Revision is filed challenging the order dt.21.04.2014 in I.A.No.99 of 2014 in O.S.No.234 of 2008 on the file of XII Additional District Judge, Krishna, at Vijayawada.

2. The petitioners herein are defendant nos.1 and 2 in the above suit.

3. The respondent/plaintiff filed the suit against the petitioners and 2nd respondent for recovery of Rs.11,84,914/- with subsequent interest at the rate of 12% per annum on value of a lorry seized by petitioners, and future damages.

4. Written statement was filed by petitioners opposing the suit claim.

5. Issues were framed.

6. On 28.02.2014, the 1st respondent examined PW.1 in chief-examination and marked documents. Thereafter, on 18.03.2014 it was posted for cross-examination of PW.1 by petitioners.

7. On 18.03.2014, the petitioners filed I.A.No.99 of 2014 to amend the written statement by raising additional

pleas.

8. In the affidavit filed in support of the said application, the petitioners contended that certain errors had occurred in the original written statement which required to be rectified and that certain additional pleas also required to be taken, because the entire file relating to the loan transactions of respondent was maintained by the Head Office at Mumbai; and when that file was perused, some important points were noticed to have been omitted in the original written statement, and are required to be now pleaded.

9. Counter-affidavit was filed by 1st respondent opposing the application for amendment of the written statement. He contended that such amendments as sought by petitioners cannot be permitted; and once issues are framed and trial commences, it is not permissible for petitioners to seek such amendments as per the amended Civil Procedure Code.

10. By order dt.21.04.2014, the Court below dismissed the said application. It held that petitioners had not given any special reasons for taking the step to amend the written statement before the commencement of trial and the proviso to Order VI Rule 17 C.P.C. therefore does not permit petitioners to seek the amendments.

11. Challenging the same, this Revision is filed.

12. Heard Sri B. Ravindra Reddy, counsel for petitioners; and Sri K. Srinivas, counsel for 1st respondent.

13. The counsel for petitioners contended that the view taken by the Court below is incorrect; no doubt, PW.1 was examined in chief and documents were marked, but the cross-examination of PW.1 had not commenced; and therefore, it cannot be said that the trial has commenced and the petitioners are precluded from seeking amendment of the written statement by virtue of the proviso to Order VI Rule 17 C.P.C. He also placed reliance on the judgments of the Supreme Court in **Baldev Singh and others, etc. v. Manohar Singh and another, etc.**^[1], and an unreported judgment of the Delhi High Court in **Raj Rani and another v. Sumitra Parashar and another**^[2].

14. The counsel for respondents however refuted the said contentions and alleged that trial has to be taken to have commenced once the matter is posted for cross-examination of PW.1; and, in any event, the pleas now raised in the amendment are inconsistent with the original pleadings in the written statement, and so they cannot be allowed to be raised by petitioners at this stage.

15. I have noted the submissions of both sides.

16. Order VI Rule 17 states :

*“17. **Amendment of pleadings.** – The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties :*

Provided that no application for amendment 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.”

17. In **Baldev Singh** (1 supra), this provision has been interpreted by the Supreme Court. It held :

“17. Before we part with this order, we may also notice that proviso to Order 6 Rule 17 of the C.P.C. provides that amendment of pleadings shall not be allowed when the trial of the Suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the Suit. From the record, it also appears that the Suit was not on the verge of conclusion as found by the High Court and the Trial Court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted hereinafter, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 of the C.P.C. which confers wide power and unfettered discretion to the Court to allow an amendment of the written statement at any stage of the proceedings.”

18. In the said judgment, the Court also held that an amendment of a plaint and of a written statement are not

necessarily governed by exactly the same principle; that some general principles are certainly common to both, but the rules that the plaintiff cannot be allowed to amend his pleadings so as to alter materially, or substitute his cause of action, or the nature of his claim has no counter-part in the law relating to amendment of written statement. It held that adding of new ground of defence, or substituting, or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. It observed that in case of amendment of written statement, Courts are inclined to be more liberal in allowing amendment of written statement than of plaint, and question of prejudice is less likely to operate with same rigour in the former than in the latter case. It further clarified that inconsistent pleas can be raised by defendants in the written statement although the same may not be permissible in the case of a plaint.

19. In **Raj Rani** (2 supra), the Delhi High Court was considering an application for amendment of a plaint sought at a later stage where evidence by way of affidavit of PW.1 had been filed and tendered in evidence and at a stage where cross-examination was yet to commence. The Delhi High Court considered the judgment of the Supreme Court in **Baldev Singh** (1 supra) and also other judgments and held that merely because an affidavit by way of evidence had been filed and the affidavit had been tendered in evidence and examination-in-chief had been

partly recorded on one date of hearing, it cannot be said that the plaintiff has been shut out from being able to amend his plaint, and such an interpretation of the proviso under Order VI Rule 17 C.P.C., was not envisaged. It held that the Supreme Court in **Baldev Singh** (1 supra) had observed that commencement of trial as used in the proviso to Order VI Rule 17 C.P.C. must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments, and therefore, it cannot be held that the evidence in that case had commenced as envisaged under Order VI Rule 17 C.P.C. It held that after the evidence is complete, Court would be slow to allow amendments unless the conditions set out in the proviso are satisfied.

20. In Brij Gopal Pallod v. Municipal Council Rep.

by G. Vasudeva Reddy ^[3], cited by counsel for 1st respondent, a learned single Judge of this Court also considered the judgment of the Supreme Court in **Baldev Singh** (1 supra) and came to the conclusion that trial would be deemed to have been commenced when the first witness is ready and available for cross-examination. It was held that filing of affidavit in lieu of chief examination is mostly a ministerial act. It clarified that in case of election petitions only, the Supreme Court had held that trial can commence even before the issues are settled. In the facts of that case, the Court took the

view that recording of evidence has not commenced in the suit, and therefore the application for amendment of the written statement, which had been allowed by the Court below, can be confirmed by the High Court. It held that a suit can be said to have been set down for trial if only the witness enters the witness box and offers himself for cross-examination. If a witness had simply filed affidavit and did not turn up for cross-examination at all, or if that stage did not reach, it is difficult to infer that the trial of the suit had commenced.

21. In the present case, it is not disputed that the cross-examination of PW.1 had not commenced although the chief-examination was recorded on 28.02.2014 and marking of the documents was also done. Therefore, in my considered opinion, the trial had not commenced. Therefore, the proviso to Order VI Rule 17 C.P.C. would not come into operation.

22. In this view of the matter, I am of the opinion that the Court below erred in dismissing the application for amendment of the written statement filed by petitioners.

23. As regards the contention of the counsel for the respondent that inconsistent pleas are being taken by petitioners by way of amendment is concerned, in view of the judgment in **Baldev Singh** (1 supra), since there is no bar to defendants taking inconsistent pleas, this contention cannot be accepted.

24. In view of the above reasoning, the Civil Revision Petition is allowed; the order dt.21.04.2014 in I.A.No.99 of 2014 in O.S.No.234 of 2008 on the file of XII Additional District Judge, Krishna, at Vijayawada is set aside; the said I.A. is allowed. No order as to costs.

25. Since the suit is of the year 2008, the Court below is directed to expeditiously decide the suit preferably within a period of six (06) months from the date of receipt of a copy of this order.

26. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30-06-2015

Ndr/*

[\[1\]](#) AIR 2006 SC 2832 (1)

[\[2\]](#) Dt.24.01.2014 in I.A.No.8419/2013 in CS(OS)2154/2010

[\[3\]](#) LAWS (APH) – 2012 – 10 – 84