

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

C.R.P.No.3794 of 2014

ORDER:

Heard Sri K.V.Raghuveer, learned counsel for the petitioner and Sri P.Venkata Rama Sarma, learned counsel for the respondent.

2. This Revision Petition is filed challenging the Order dt.02-09-2014 in I.A.No.595 of 2014 in O.S.No.126 of 2012 of the Additional Senior Civil Judge, Tirupathi.

3. Petitioner herein is plaintiff in the suit. He filed the suit for recovery of money against the respondent alleging that the respondent had borrowed money from him and had issued a cheque bearing No.939360 which came to be dishonoured subsequently. Written Statement was filed by the respondent admitting these allegations but it is pleaded in para-12 of the Written Statement that part payment was made. Other defences were also raised therein.

4. Issues framed. Trial commenced and after conclusion of the trial, the petitioner filed I.A.No.595 of 2014 under Order 6 Rule 17 CPC stating that by mistake and over sight, the cheque number in the plaint was wrongly mentioned as 939360 instead of 969360 which is a typographical mistake and stating that recently the

petitioner came to know about the said fact.

5. This application was opposed by the respondent contending that no application for amendment shall be allowed after the trial had commenced. It is further contended that consequently amendments also should be mentioned and this was not done by the petitioner. It was denied that there was any typographical error.

6. By order dt.02-09-2014, the Court below dismissed the said I.A. It held that in view of the proviso to Order 6 Rule 17 CPC, since trial had commenced, it cannot be permitted. It also held that no reason was assigned for not filing this petition even after filing Written Statement. The Court below assumed that in the Written Statement, there was a plea of denial of issuance of cheque in question and observed that at least after seeing the plea, the petitioner should have filed application for amendment of plaint to correct the number of the cheque.

7. Challenging the same, this Revision Petition is filed.

8. Learned counsel for the petitioner contended that the mentioning of the cheque number as 939360 in the plaint is incorrect and that it should have been mentioned as 969360; nowhere in the Written Statement, the respondent had pointed out this mistake committed in the plaint; in fact, the Written Statement

admits the issuance of the cheque in question; during the course of cross examination of P.W.1 only, this issue came to light and therefore, the application was filed seeking amendment. He contended that the petitioner cannot be said to have knowledge of the typographical error in the plaint and expected to correct it when there was no plea in the Written Statement pointing out this fact. Therefore, the petitioner in spite of due diligence, could not have raised this issue before the commencement of trial and therefore the proviso to Order 6 Rule 17 is not a bar.

9. Learned counsel for the respondent refuted the contentions of the learned counsel for the petitioner and supported the order of the Court below.

10. I have noted the submissions of both sides.

11. In para-3 of the plaint, the petitioner has alleged as under:

“The plaintiff submits that defendant is usually approaching the plaintiff and borrowing the amounts to meet his urgent business necessities. Like-wise the defendant herein approached the plaintiff and borrowed a sum of Rs.2,00,000/- (Rupees two lakhs only) for his business necessities on 25-02-2009 and in discharge of the said amount the defendant herein issued a cheque bearing No.939360 dated 25-02-2009 drawn on Andhra Bank, Balajinagar Branch, Tirupati for Rs.2,00,000/-.”

12. In the Written Statement of the respondent, in para-4, it is pleaded as follows:

“The allegations made in para (3) of the plaint are all true and correct, that the defendant herein borrowed a sum of Rs.2,00,000/- from the plaintiff on 22-11-2008 for his family necessities and in consideration of the same the defendant herein executed a promissory note in favour of the plaintiff promising to repay the said sum together with interest at 24% p.a. on demand or order of the plaintiff have to be strictly proved by the plaintiff.”

13. Nowhere in the Written Statement is it pointed out that the cheque number mentioned in the plaint is incorrect. It appears that during the course of trial, this aspect came out and that was when the petitioner thought it fit to seek amendment of the plaint.

14. It is not a situation where the respondent-defendant had denied issuing the cheque in question or denied the loan transaction in question, and on the contrary, he admitted what is stated by the petitioner-plaintiff in para-3 of the plaint. The mention of the number in the plaint incorrectly is obviously a typographical mistake and had the respondent pointed it out in his Written Statement, the petitioner would have immediately taken steps to correct it. Since the said plea was not raised in the Written Statement and the issuance of the cheque was admitted, it can be said that in spite of due diligence, the petitioner could not have raised this matter before commencement of trial. Also the said amendment does not cause any prejudice to the respondent since he has not disputed issuance of cheque in question.

15. Therefore, in my opinion, the Court below

erred in dismissing I.A.No.595 of 2014. The Civil Revision Petition is accordingly allowed and the order dt.02-09-2014 in I.A.No.595 of 2014 in O.S.No.126 of 2012 of the Additional Senior Civil Judge, Tirupathi, is set aside and the said I.A. is allowed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-07-2015

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