

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.4906 of 2013

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.03.07.2013 in I.A.No.238 of 2013 in O.S.No.146 of 2010.

2. The petitioner had filed the said suit against respondents to declare the notice/provisional order dt.17.03.2010 served on him by respondent nos.1 to 5 as arbitrary, capricious, *ultra vires* and void; for a perpetual injunction restraining respondents from taking any action pursuant to the said notice including commencement of prosecution against him; and for costs.

3. It was alleged in the plaint that on 17.03.2010, the petitioner had been served a notice demanding a sum of Rs.79,331/- by the officials of the 3rd respondent; and although the petitioner did not agree with the said demand, since there was threat of disconnection, he was forced to pay 50% thereof, i.e., a sum of Rs.39,951/- on the next day.

4. On 08.04.2013, the petitioner filed I.A.No.238 of 2013 under Order 6 Rule 17 C.P.C. seeking refund of this sum of Rs.39,951/- which he claimed to have paid by a demand draft under protest to get back the service

connection. He stated that on account of oversight he forgot to make claim for refund, and that it is only a consequential relief. He also contended that he was forced to pay compounding fee of Rs.24,000/- on 09.03.2012 and he is also seeking refund of the same.

5. The respondent opposed the same stating that the amendments sought by petitioner seeking refund of the sum of Rs.39,951/- and Rs.24,000/-, are barred by limitation, and I.A. cannot be allowed.

6. By order dt.03.07.2013, the Court below dismissed the said I.A. holding that the amendments sought by petitioners in respect of both amounts are barred by time.

7. Challenging the same, the present Revision is filed.

8. Heard Sri Siva Bhami Reddy, counsel for petitioner; and Sri M. Ravindra, counsel for respondent nos.1 to 5. None appears for 6th respondent.

9. The finding of the lower court is *prima facie* unsustainable as regards the sum of Rs.24,000/- was said to have been paid on 09.03.2012 by petitioner, since the application seeking amendment was filed on 08.04.2013. So this claim it is not barred by time. However, as regards the claim for refund of Rs.39,951/-, although the trial court

observed that petitioner did not state when such payment was made by him, in the plaint it is mentioned that the said payment was made on 18.03.2010. Therefore, as regards the claim for the said amount of Rs.39,951/-, it is barred by limitation.

10. In the present case, only issues have been framed. No affidavit in lieu of chief-examination was filed. Therefore, it cannot be said that the proposed amendment would be barred by the proviso under Order 6 Rule 17 C.P.C., since trial has not commenced.

11. The Court below is also not correct in stating that since the proposed amendment would take away its pecuniary jurisdiction, it cannot be allowed. If the application for amendment is likely to deprive the Court where the application is filed of jurisdiction to try it and if it is a case for allowing the amendment, the court shall allow the amendment and then return the plaint to the party for presentation to the Court having proper pecuniary jurisdiction.

12. Therefore, the Revision is partly allowed and the Court below is directed to permit petitioner to amend the plaint insofar as claim of refund of Rs.24,000/- paid by him on 09.03.2012, is concerned.

13. Accordingly, the Civil Revision Petition is allowed in part. No order as to costs.

14. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18.08.2015

Ndr/*