

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

C.R.P.No.1026 of 2015

ORDER:

Heard Sri V.Siva Prasad Reddy, learned counsel for the petitioner and Sri Nimmagadda Satyanarayana, learned counsel for the respondents.

2. This Revision Petition is filed under Article 227 of the Constitution of India challenging the Order dt.19-01-2015 in I.A.No.2204 of 2014 in O.S.No.111 of 2006 of the Senior Civil Judge, Chirala.

3. Petitioner herein is 1st defendant in the suit. Respondent Nos.1 to 4 filed the above suit for specific performance of agreement of sale dt.05-07-2001 against the petitioner and respondent Nos.9 and 10. The petitioner filed a written statement admitting the execution of suit agreement of sale but raised a plea that the suit is barred by limitation.

4. Pending suit, 2nd respondent died and his legal representatives were brought on record as plaintiff Nos.5 to 8. Subsequently, respondent Nos.1 to 8/plaintiffs examined P.Ws.1 to 4 and the matter was posted for the evidence of petitioner.

5. At that stage, the petitioner filed I.A.No.2204 of 2014 in O.S.No.111 of 2006 under Order 6 Rule 17

CPC to amend her Written Statement. In the affidavit filed in support of the said Written Statement, she sought to contend that there were certain subsequent additions made in the suit agreement of sale dt.05-07-2001 by the respondent Nos.1 to 4 and also raised a plea with regard to a notice dt.18-03-2006 issued by respondent Nos.1 to 4 to her.

6. Counter affidavit was filed opposing the said application. It was contended by respondent Nos.1 to 8 that after the evidence had commenced, it is not permissible to entertain such an application to amend the Written Statement; the theory of interpolation which was not at all pleaded in the original Written Statement cannot be allowed to be raised by way of amendment; and the suit agreement of sale itself had been filed along with suit, and the petitioner having knowledge of it, cannot be allowed to amend the Written Statement raising this plea at this point of time. They also denied the allegation that they had got issued notice dt.18-03-2006 through a counsel Sri K.Bhanu Prakash Kumar, Advocate, Cheerala and contended that without filing the original legal notice dt.18-03-2006 along with a petition to receive it, she is not entitled to introduce it by circumventing the statutory provisions. It was also pointed out that there was no mention of this notice dt.18-03-2006 in the written statement filed by the petitioner and she cannot be allowed to raise a plea in that regard by way of

amendment to the Written Statement.

7. By order dt.19-01-2015, the Court below dismissed the said application.

8. It held that although the trial commenced and P.Ws.1 to 4 were cross examined at length by the learned counsel for the petitioner, no suggestion was put to the witnesses that there was an interpolation in the said agreement of sale. It held that there is a note in the agreement of sale that there is a correction in the agreement of sale and beneath the note, the petitioner had affixed her signature and that if the petitioner is allowed to amend the Written Statement and take a plea that there is an interpolation in the said agreement of sale, it would definitely take away the admission made by the petitioner regarding the execution of the agreement of sale. It also held that after the trial had commenced, unless the Court is satisfied that in spite of due diligence, the matter could not be brought on record before the commencement of trial, application for amendment of Written Statement cannot be allowed. It further held that petitioner admitted that she did not bring to the notice of her counsel about receipt of notice dt.18-03-2006 and this negligence on her part coupled with fact that she did not file an original of the legal notice, she cannot be allowed to file the present application eight years after the suit was filed enclosing photo copy of the said notice. It also held

that if amendment is allowed, it would definitely cause injustice to the other side.

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

10. Learned counsel for the petitioner contended that the order passed by the trial Court cannot be sustained and that the said Court should have allowed the application for amendment of the Written Statement in the circumstances pleaded by the petitioner. He also placed reliance on the judgment in **Pradeep Singhvi and another Vs. Heero Dhankani and others**^[1].

11. Learned counsel for the respondent Nos.1 to 8 on the other hand refuted the above contentions and supported the order passed by the Court below. He contended that the Court below had given valid reason for dismissing the application for amendment and the said order did not warrant any interference by this Court in exercise of power under Article 227 of the Constitution of India.

12. I have noted the submissions of both sides.

13. From the facts narrated above, it is clear that the application for amendment of the Written Statement has been filed by the petitioner after the evidence on the side of the respondent Nos.

1 to 8/plaintiffs was closed and the matter was posted for

her evidence.

14. Order 6 Rule 17 CPC states:

*“Order VI Rule 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 such 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.]”

15. As per the proviso to Order 6 Rule 17 CPC, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before commencement of trial, no application for amendment shall be allowed after the trial has commenced.

16. It is not disputed that the suit was filed in the year 2006 in respect of an agreement of sale dt.05-07-2001 and the application for amendment was moved on 17-10-2014 eight years after the suit was filed. It is also an undisputed fact that in the Written Statement filed by the petitioner/D-1, she had admitted the execution of the suit agreement of sale and had raised only a plea that the suit is barred by limitation.

17. In the amendment now sought to be made, a

plea is sought to be raised by her to the effect that there is interpolation in the suit agreement of sale and also a plea with regard to legal notice

dt.18-03-2006 allegedly issued by respondent Nos.1 to 4 to her prior to filing of the suit on 11-08-2006. It is also not disputed that the original of the suit agreement of sale had been filed along with the suit and that in the said agreement of sale, there is a note to the effect that there is a correction in it and petitioner herself had affixed her signature on the said note.

18. As rightly held by the trial Court, if the petitioner is now allowed to take a plea that there is an interpolation in the document, it would amount to taking away the admission made in the Written Statement by her regarding the execution of the suit agreement of sale. This is not permitted by law.

19. In **Heeralal and Kalyan Mal and others** ^[2] and **Pradeep Singhvi** (1 supra), cited by the learned counsel for the petitioner, no doubt the Supreme Court held that the Court would have discretion to permit at any stage of the proceedings such amendment in the pleadings as would be necessary for the purpose of determining the real questions in controversy between the parties. In the said case, a suit for recovery of money was filed on the basis of a document dt.01-04-1995 and after the examination of the plaintiffs, the defendants

moved an application for amendment of the Written Statement raising an additional plea. The prayer was rejected by the trial Court and also by the High Court. But the Supreme Court set aside the said order holding that there is no irreparable prejudice to the plaintiffs merely because trial had commenced and at best, the plaintiff would have to be reexamined. However, the said case arose out of S.L.P. filed in the year 2001 which indicates that the suit in that case was filed prior to 2002 i.e. prior to the amendment to Order 6 Rule 17 CPC, introducing the proviso restricting the power of the Court to allow amendments after the trial commenced. Therefore, the said decision does not assist the petitioner.

20. In **State of A.P. and others Vs. Pioneer Builders, A.P.**^[3], the Supreme Court reiterated principle that applications for seeking amendment of pleadings can be allowed at any stage of the proceedings and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties unless serious injustice or irreparable loss is likely to be caused to the other side. However, the said case before the Supreme Court arise out of proceedings filed under Sections 8 and 20 of the Arbitration Act, 1940 which were sought to be converted into a civil suit by amending the pleadings. The application under Sections 8 and 20 of the Arbitration Act

has been filed in 1992 and the application for amendment was filed in 1993 long prior to the coming into force of the Civil Procedure (Amendment) Act, 2002, which introduced the proviso to Order 6 Rule 17 CPC. Therefore, this decision also does not come to the aid of the petitioner.

21. In **Baldev Singh and others Vs. Manohar Singh and another**^[4], the Supreme Court considered the proviso to Order 6 Rule 17 CPC introduced by the Code of Civil Procedure (Amendment) Act, 2002 and held that the proviso which had been added to Order 6 Rule 17 CPC restricts the Courts from permitting an amendment to be allowed in the pleadings of either of the parties, if at the time of filing an application for amendment, the trial has already commenced. However, the court may allow amendment if it is satisfied that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

22. Similar view has been taken in **Usha Balashaheb Swami and others Vs. Kiran Appaso Swami and others**^[5]. In that case, the trial of the suit had not yet commenced and therefore it was held that the proviso to Order 6 Rule 17 CPC would not apply.

23. In both the **Baldev Singh** (3 supra) and **Usha Balashaheb Swami** (4 supra), the Supreme Court had reiterated the plea that a party cannot wriggle out of

an admission by seeking amendment thereof, although it can explain the said admission and add a rider and/or proviso to the admission while keeping the admission intact.

24. Applying the ratio of these decisions, I am of the considered opinion that if the petitioner is allowed to take a plea of interpolation, notwithstanding the fact that she admitted about the execution of the suit agreement of sale and the fact that admittedly, there is a recital in the suit agreement of sale in the form of a note about the existence of an interpolation which is also attested by the petitioner, it would amount to withdrawing an admission. The petitioner cannot be allowed to withdraw the same by way of seeking amendment to the Written Statement filed by her.

25. Also nowhere in the affidavit filed in support of the application for amendment has the petitioner made an averment as to the circumstances which prevented her from raising this issue of interpolations in the agreement of sale prior to the commencement of trial. Since the amendment has been sought eight years after suit, without any explanation therefore, the Court is left with no option but to conclude that there is no due diligence on the part of the petitioner and that the application for amendment, is not a *bona fide*.

26. I therefore do not find any merit in the Civil

Revision Petition and the same is accordingly dismissed.

No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 25-08-2015

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[\[1\]](#) (2004) 13 S.C.C. 432

[\[2\]](#) (1998) 1 S.C.C. 278

[\[3\]](#) (2006) 12 S.C.C. 119

[\[4\]](#) (2006) 6 S.C.C. 498

[\[5\]](#) (2007) 5 S.C.C. 602