

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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Civil Revision Petition No.4038 of 2015

ORDER:

This revision, under Article 227 of the Constitution of India, is preferred against the order passed by the learned Senior Civil Judge, Yellamanchili in I.A.No.382 of 2015 in O.S.No.72 of 2005 dated 19.08.2015.

The petitioner herein is the petitioner in I.A.No.382 of 2015, and the defendant in O.S.No.75 of 2009 - a suit filed for specific performance of an agreement of sale. A written statement was filed by the petitioner herein, and evidence was let in on behalf of the plaintiff who was cross-examined in detail by the petitioner herein. Thereafter, the petitioner herein also filed his evidence in chief which was received by the Court as D.W.1. At that stage, the present petition was filed seeking leave of the Court to file an additional written statement to take the plea of incapacity of the respondent-plaintiff to pay the advance amount of Rs.4,50,000/-. The justification for filing an application, seeking permission to file an additional written statement, is that, by inadvertence and oversight, the said plea could not be taken earlier in the written statement.

The respondent herein (plaintiff in the suit) filed his counter to the I.A. stating that the suit was filed in the year 2009; the defendant's counsel had cross-examined the plaintiff and his other witnesses (i.e. P.Ws.2 and 3) at length by taking sufficient time long back; the suit was coming for marking of documents, and for cross-examination of the defendant as D.W.1; instead of facing cross-examination, the defendant was filing petitions, one after the other, in order to drag on the suit proceedings, and to harass the plaintiffs; as the application was filed belatedly, there were no *bona fides* in the petition; and it was liable to be dismissed.

By the order under revision, the Court below disbelieved the submission of the petitioner that, due to oversight alone, he could not take such a plea in his written statement holding that, when the petitioner was completely denying the version of the respondent-plaintiff from the beginning, there was no chance of oversight or ignorance on the part of the petitioner in not taking such an important plea; evidence, on behalf of the respondent/plaintiff, was already closed, and the matter was coming up for evidence of the petitioner-defendant; if the petition was allowed, it would cause inconvenience to the respondent-plaintiff, as he would not have an opportunity to answer the plea taken by the petitioner at the belated stage by filing

an additional written statement; and it would prejudice the case of the respondent-plaintiff. The Court below considered it just and proper to dismiss the petition.

Before this Court Sri A.Rama Krishna, learned counsel for the petitioner, would place reliance on **Aloor Subrahmanyam vs. Suthram Prabhakar** and **P.Hajiram Bi vs. M.Ismail Khan** in support of his submission that the application, to file an additional written statement, can be made at any stage; and, unlike the bar under Order 6 Rule 17 C.P.C., there is no such bar under Order 8 Rule 9 C.P.C.

In **Aloor Subrahmanyam**¹ the petitioner had filed an application seeking leave of the Court to file a rejoinder to the written statement and, on the application being dismissed, he had invoked the jurisdiction of this Court. It is in this context that this Court observed:-

“ Order VIII Rule 9 CPC deals with subsequent pleadings. It has imposed bar on the parties filing pleadings subsequent to the filing of the written statement other than by way of defence to set-off or counter-claim, except by the leave of the Court. This provision per se does not stipulate any limitations on the power of the Court to allow the parties to file subsequent pleadings. However, the Courts have interpreted this provision by reading certain limitations into the same, obviously to ensure that the scope of the proceedings is not unduly enlarged and the suit proceedings are not dragged on in the guise of filing subsequent pleadings.

In my opinion, the legislature has designedly omitted to lay down any guidelines restricting the scope of the Courts to specific instances while granting leave for filing subsequent pleadings. From this itself, the legislative intention can be gathered to the effect that unless the Court forms an opinion that the application for leave is filed for reasons, such as procrastinating the suit proceedings or to widen the scope of the suit or change the nature and character of the suit proceedings, the applications shall ordinarily be allowed. By permitting such subsequent pleadings, the Courts can avoid multiplicity of proceedings. That approach will also help the Court to comprehensively and effectually decide all the questions arising in the case with reference to the complete information furnished by the parties through their original as well as subsequent pleadings.

Viewed from this angle, the provision of Order VIII Rule 9 needs to be construed in a manner which would ordinarily permit the party to file subsequent pleadings rather than scuttling their right to do so. A caveat is, however, entered that in the guise of such applications, the parties cannot be permitted to indulge in filing frivolous and vexatious petitions even where the need for filing subsequent pleadings does not exist. It is eventually for the Courts to make a delicate balance between the expediency of permitting subsequent pleadings and discouraging the frivolous and merit less applications.

It is evident from the aforesaid judgment that, while parties are

entitled to file pleadings subsequently also, they cannot be permitted to indulge in filing vexatious and frivolous petitions; and the Court should make a delicate balance between the expediency of permitting subsequent pleadings, and discouraging frivolous and merit less applications.

Again in ***P.Hajiram Bi***² this Court observed:

“..... As noted above, while Order VI CPC relates to the pleadings in general. Order VIII CPC exclusively deals with the written statement. The same rigor of standard that is prescribed in Rule 17 of Order VI CPC is not prescribed in Rule 9 of Order VIII CPC.

The present case, whereby the respondents wanted to add further pleadings to the written statement, squarely falls under Rule 9 of Order VIII CPC. THE discretion of the Court to allow subsequent pleadings under Rule 9 of Order VIII CPC is perhaps wider than the discretion given to it by Rule 17 of Order VI CPC. While in both the events, the parties have to necessarily show diligence, in cases, falling under Rule 9 of Order VIII CPC the Court can show more latitude towards the party in allowing subsequent pleadings by the defendants.

The obvious reason for this appears to be that by the change of plaint by the plaintiff at a belated stage, the proceedings instituted by him may take to a totally different course, while such a possibility may not arise in the case of written statement. That appears to be the reason why the Court is vested with wider discretion in case of amendment of pleadings in respect of the written statement by the defendants.

Whether or not leave should be granted, under Order 8 Rule 9 C.P.C., is a matter of discretion to be exercised by the Court below. While, ordinarily, the Court should permit additional pleadings, it has the discretion, for just and valid reasons, to refuse to grant leave also.

In the present case, the Court below has agreed with the submission of the respondent-plaintiffs that P.Ws.1 to 3 were examined and cross-examined in detail; no suggestion was even put to those witnesses that the plaintiff did not have capacity to pay the advance amount; the affidavit in chief of the defendant had also been filed; and it was difficult to accept the submission of the petitioner that he had failed to take such an important plea by oversight or ignorance.

The Court below has considered the petitioner's request and has refused to permit the petitioner to file an additional written statement. The submission of Sri A.Rama Krishna, if accepted, would mean that an application to amend the pleadings, or to file additional pleadings, can be made as a matter of course and, in each and every case, the Court is bound to grant leave whenever such an application is filed. The very fact that the rule requires leave of the court to be obtained itself indicates that the Court has the discretion either to grant or to

refuse to grant leave. As long as the exercise of discretion is for just and valid reasons, this Court, while exercising supervisory jurisdiction under Article 227 of the Constitution of India, would not interfere. The conclusion of the Court below, in refusing to grant leave, is based on just and valid reasons, and does not suffer from any patent illegality necessitating interference under Article 227 of the Constitution of India.

The Civil Revision Petition fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

01st October 2015.

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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Date: 01.10.2015

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