

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

C.R.P. No.2000 of 2015

Between:

Yenduri Sri Anjaneyulu ... Petitioner/Plaintiff

And

State Bank of India ... Respondent

JUDGMENT PRONOUNCED ON 11.09.2015
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? :
2. Whether the copies of judgment may be marked to Law Reporters/Journals. :
3. Whether their Ladyship/Lordship wish to see the fair copy of the Judgment? :

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

C.R.P. No.2000 of 2015

ORDER:

This revision petition has been filed aggrieved by the order dated 10.03.2015 passed in I.A. No.95 of 2015 in O.S. No.49 of 2006 by the Additional Senior Civil Judge, Machilipatnam.

The revision petitioner and the respondent herein are the plaintiff and the defendant, respectively.

Brief facts of the case are that the plaintiff filed O.S. No.49 of 2006 for recovery of possession of the suit scheduled property apart from recovery of rental and damages. During the course of pendency of the suit, he filed a petition to appoint an Advocate Commissioner to break-open the lock of the premises and deliver the same. As per the directions of the Court below, an Advocate Commissioner was appointed and the Advocate Commissioner delivered the property to him. Thereafter, he filed a memo to the effect that he is not pressing the relief of recovery of possession.

While so, the plaintiff also filed I.A. No.95 of 2015 under Order VI Rule 17 CPC seeking amendments to the plaint, *inter alia*, stating that due to lack of care on the part of the defendant the premises in question was got damaged and as such, he spent an amount of Rs.5,04,000/- to get repairs effected and thus, he is entitled to such amount and therefore, needs to amend the plaint accordingly.

On behalf of the defendant, denying the claim of the plaintiff, counter was filed.

On appreciation, the Court below dismissed the said application. Assailing the same, the plaintiff filed the present revision petition.

The learned counsel for the petitioner submitted that among other reasons the Court below dismissed the said application on the ground that the application is barred by limitation, which is not justifiable. It is also submitted that the Court below ought to have seen that the proposed amendment even if it relates to a time barred claim can be allowed to avoid

further litigation and to sub serve the cause of justice. Hence, the impugned order is erroneous and liable to be set aside.

Heard the learned counsel for the petitioner. Though the notice is served on the respondent, there is no representation on his behalf. Hence, the matter is taken up as *ex parte*.

Admittedly, initially the suit was filed for recovery of possession of the property in question apart from recovery of rental and damages. Subsequently, upon delivering the property in question to the plaintiff he filed a memo to the effect that he is not pressing the relief of recovery of possession.

As could be seen, the claim of the defendant/respondent is that he vacated the premises in question on 28.02.2001. Further, a petition for amendment of plaint claiming damages of Rs.6,00,000/- was already filed on 10.12.2014. The Court below observed that the so-called claim for additional damages has arisen subsequent to the filing of the suit more particularly after the respondent/defendant stated to have vacated the schedule property on 28.02.2001. Further, it is also observed that as the petition is filed after the lapse of three years from the date of accruing cause of action, the claim itself is barred by limitation leaving aside the merits of the correctness of the amounts mentioned in the plaint vis-à-vis the petition seeking amendment of the plaint. Specifically, it is noted by the Court below that the petitioner/plaintiff had sought for damages for the so-called loss to the building thus, this petition is a misconceived one.

Since the petitioner/plaintiff had already sought for damages of Rs.6,00,000/- he is rightly precluded from claiming any additional damages by giving cogent reasons by the Court below and not permitting to amend the suit.

Since the Court below dismissed the said application on one of the grounds that the claim of the petitioner is barred by limitation without there being any plea from either of the parties therefore, this Court is inclined to set aside the said observation by upholding the rest of the reasons for dismissing the said application.

In view of the above, I do not see any other reasons to interfere with the impugned order and therefore, this revision petition is liable to be dismissed.

Accordingly, this revision petition is dismissed.

As a sequel, miscellaneous petitions, if any, stands closed. There shall be no order as to costs.

JUSTICE G.CHANDRAIAH

Date: 11.09.2015
LSK