

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.2433 of 2012

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.20.04.2012 in I.A.No.479 of 2011 in O.S.No.4 of 2008 on the file of IV Additional District Judge, Tirupathi.

2. The petitioners herein are defendants in the suit.
3. The respondent filed the suit for recovery of money on the basis of a promissory note allegedly executed by petitioners.
4. Written statement was filed by petitioners denying their liability and also denying that they executed the suit promissory note.
5. Issues were framed. Trial commenced. Evidence on the side of respondent/plaintiff was completed and the matter was posted for evidence of petitioners.
6. At that stage, petitioners filed I.A.No.479 of 2011 under Order 6 Rule 17 C.P.C. to amend the written statement by taking an additional plea with regard to the Memorandum of Understanding allegedly executed between the parties on 30.10.2007.

7. In the affidavit filed in support of this application it is alleged that the information about the said Memorandum of Understanding was given to petitioners' Advocate, but he had not mentioned it by mistake.

8. Counter-affidavit has been filed by respondent opposing this application. It was pointed out that the averment in the application that the Memorandum of Understanding dt.30.10.2007 was traced out recently, contradicts the plea that information about it was given to the previous Advocate but he did not mention it. It is also stated that the nature of the suit would be changed if the amendment is permitted. Apart from this, it is also contended that the amendment is sought at a belated stage after the evidence of plaintiff is closed and that cannot be permitted.

9. By order dt.20.04.2012, the Court below dismissed the said application. It held that the application for amendment is sought after the matter was posted for evidence of defendants, and therefore it cannot be permitted. It also held that the proposed amendment sets up a case which is completely inconsistent with the original plea.

10. Questioning the same, this Revision is filed.

11. The counsel for petitioners contended that the observation of trial court that the plea taken is inconsistent

with the original pleading, is incorrect; even otherwise, the defendant is permitted to take inconsistent pleas; and at any rate, the party cannot be deprived of an opportunity to amend the pleading, if a mistake has been committed by the Advocate in drafting the pleading.

12. On the other hand, the counsel for respondent refuted the above contentions and stated that after the trial in the suit has commenced, amendments are not permitted, unless the person seeking amendment satisfies the court that in spite of due diligence he could not have raised the matter before commencement of the trial. He pointed out that no reason has been assigned by petitioners as to why he could not have raised the matter before commencement of trial.

13. Admittedly, the application for amendment was filed after the matter was posted for evidence of defendants, i.e., after the trial had commenced.

14. Order 6 Rule 17 C.P.C. was amended by the Civil Procedure Code (Amendment) Act, 2002 w.e.f. 01.07.2002 and a proviso has been added thereto which states 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. Admittedly, there is no mention in the affidavit filed in support of the I.A. as to the reason which prevented the petitioners from taking this plea before commencement of trial. Conveniently, the then Advocate on record has been blamed. Such an explanation, if accepted, will result in allowing of every application for amendment notwithstanding the proviso to Order 6 Rule 17 C.P.C.

16. Secondly, the suit has been filed in the year 2008. The application for amendment has been filed on 02.12.2011, at least two years after the suit has been filed. The petitioner being a business man, doing business at Tirupathi is expected to go through the contents of written statement at the time when he signs it. The petitioner had time of at least two years to read the written statement and find out if there were any omissions in it, and he could have done this before the trial commenced.

17. Therefore, I am of the opinion that petitioner had not exercised due diligence in the matter. I am therefore of the opinion that the court below was correct in dismissing I.A.No.479 of 2011 filed by petitioners for amendment of written statement. I therefore do not find any merit in the Revision and it is accordingly dismissed. No order as to costs.

18. Miscellaneous applications, pending if any in this

Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-06-2015

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