

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION No.1616 of 2015

ORDER:

This revision, under Article 227 of the Constitution of India, is preferred against the order passed by the Senior Civil Judge, Yellamanchili in I.A. No.109 of 2014 in O.S. No.47 of 2012 dated 09.02.2015.

The respondent herein filed the application in I.A. No.109 of 2014, under Order 6 Rule 17 CPC, seeking amendment of the plaint. The case of the respondent-plaintiff was that they had, by mistake, stated that the plaintiff was residing in Anakapalli; this error was noticed after the petitioner was examined as P.W-1; and, therefore, an application was made to amend the plaint. While the respondent-plaintiff contended that the error in the plaint, which necessitated amendment, was a typographical error, the requirement of the proviso to Order VI Rule 17 is that no application for amendment shall be allowed, after the trial has commenced, unless the Court comes to the conclusion that, inspite of due diligence, the party could not have raised the matter before commencement of trial.

No finding has been recorded by the Court below, in the order under revision, on the requirement of the respondent-plaintiff to satisfy the due diligence test in terms of the proviso to Order VI Rule 17.

While I was initially inclined to admit the revision and grant stay, Sri A.S.C. Bose, Learned Counsel for the respondent, would submit that, as this question necessitates examination by the Court below, this Court may, instead, set aside the order under revision, and remand the matter to the Court below for its consideration afresh and in accordance with law.

The order under revision is set aside and the matter is remanded to the Court below for its examination afresh. The Court below shall consider whether the petitioner has satisfied the due diligence requirement of the proviso to Order VI Rule 17 CPC, and thereafter pass orders afresh and in accordance with law. The Civil Revision Petition is disposed of. No costs.

RAMESH RANGANATHAN, J

Date: 10.07.2015

MRKR