

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

CIVIL REVISION PETITION No.2202 of 2014

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06.03.2015

Between:

G.Ravinder Rao and others

...Petitioners

And

M/s.Wonderla Holidays (pvt) Ltd., Hyderabad

...Respondent

Counsel for the petitioners: Sri N.Raghavan

Counsel for respondent: Sri Shyam Sunder Murthy

The Court made the following:

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ORDER:

This civil revision petition arises out of the order, dated 02.06.2014, in I.A.No.746 of 2013 in O.S.No.2202 of 2012 on the file of learned Principal Senior Civil Judge, Ranga Reddy District.

I have heard Sri N.Raghavan, learned counsel for the petitioners and Sri Shyam Sunder Murthy, learned counsel for the respondent.

The respondent filed the aforementioned suit for perpetual injunction restraining the petitioners from interfering with their peaceful possession and enjoyment of the suit schedule properties. The petitioners filed written statement opposing the relief. They have also filed the aforementioned I.A. for amendment of the written statement. In the affidavit filed in support of the said application, petitioner No.1 averred that the written statement was drafted by their counsel in the absence of the deponent on the telephonic instructions given by him from U.S.A. and also based on the information furnished by his G.P.A. holder – Sri M.Yadagiri Reddy regarding the extent of land, location and other relevant facts and that the G.P.A. holder could not furnish the intrinsic facts. He further pleaded that certain mistakes have crept in the written statement, which were noticed by him at the time of signing the written statement on his return from U.S.A. This application was opposed by the respondent. The lower Court, by the order under revision, has dismissed the said application.

A perusal of the order of the lower Court shows that no sound

reasons are discernable from it. However, this Court is able to decipher two reasons assigned by the lower Court for rejection of the application for amendment, viz., 1) that the application filed for incorporating the omissions cannot be permitted under Order VI Rule 17 C.P.C. and 2) that the petitioners are seeking to raise inconsistent pleas which is also not permissible.

Order VI Rule 17 C.P.C. empowers the Court to permit amendment of the pleadings at any stage of the proceedings, where it finds such amendment is just and necessary for the purpose of determining the real questions and controversies between the parties. There is a partial embargo on this power of the Court, in that, the proviso to the said rule ordains that no such application will be allowed after the trial commences 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. In the instant case, the proviso is not attracted since the counsel informed this Court that the suit is at the stage of framing of issues.

The Courts must be more liberal in permitting pre-trial amendments of pleadings. In **Sampath Kumar Vs. Ayyakannu and another**^[1], the Supreme Court distinguished between pre-trial and post-trial amendments and held that in the former class of cases, the Courts must be more liberal in allowing amendment of pleadings as the opposite party will have more opportunities to rebut the amended pleadings than in the latter cases.

Dealing with the amendment of written statements, the Apex Court in **M/s. Modi Spinning & Weaving Mills Co. Ltd. and another Vs. M/s. Ladha Ram & Co.**^[2], held that inconsistent pleadings also can be permitted to be raised and that while allowing such amendments, a party shall not be allowed to displace the pleadings constituting admissions

made by the defendants in the written statement.

In **G.S. Prakash Vs. V. Polasa Hanumanlu**^[3], I had an occasion to examine in deep the scope of Order VI Rule 17 CPC and culled out the essence of the judicial precedents holding the field. I have illustrated the instances, for and against the amendments. It will suffice for this case instances where amendments have to be refused are reproduced from that Judgment hereunder :

- (i) Where by the proposed amendment the party seeks to alter the nature, character and constitution of the suit (mere inconsistent pleadings may not, in all cases, change the nature and character of the suit) or substitute cause of action or introduce a distinct cause of action;
- (ii) where the valuable defence by way of admissions by a party has accrued to the opposite party and by the proposed amendment the party intends to resile from such admissions;
- (iii) where the position of the other party will be altered by the proposed amendment and the injury caused to him by such alteration could not be compensated in costs.
- (iv) where the proposed amendment lacks bonafides and is far too belated and the party seeking the amendment was not diligent in approaching the court;
- (v) where a fresh suit, if instituted on the proposed amendments, will be barred by law.

On the application of the legal position discussed above to the case on hand, I find no reason to reject the application of the petitioners for amendment of the written statement. As noted above, the suit is at pre-trial stage. Hence, the Court has very wide discretion to allow amendment. Even if the petitioners seek to raise inconsistent pleas, there is no bar on raising such pleas. The lower Court has not found that any of the instances mentioned in **G.S. Prakash (3-supra)** exists in this case. In my opinion, the lower court has completely failed to understand the scope and purport of Order VI Rule 17 C.P.C. in dismissing the application by assigning unsound reasons.

On the above analysis, I.A.No.746 of 2013 in O.S.No.2202 of 2012

is allowed. However, the lower Court shall permit the respondent to file rejoinder, if any, to the amended written statement.

The Civil Revision Petition is accordingly allowed.

As a sequel to allowing the Civil Revision Petition, interim order, dated 07.08.2014, is vacated and C.R.P.M.P.No.3077 of 2014 filed by the petitioners for interim relief shall stand disposed of.

(C.V.NAGARJUNA REDDY, J)

06th March, 2015

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GHN/AM

[\[1\]](#) (2002) 7 SCC 559

[\[2\]](#) (1976) 4 SCC 320

[\[3\]](#) C.R.P.No.2900 of 2013, Judgment dt. 18-7-2014