

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.5034 of 2014

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the Order dt.02-09-2014 in I.A.No.613 of 2014 in O.S.No.154 of 2007 of the Principal Junior Civil Judge, Kadiri, Anantapur District.

2. The petitioners are defendants in the suit. The respondent/plaintiff filed the suit for a perpetual injunction restraining the petitioners from interfering with his peaceful possession and enjoyment of the plaint schedule property.

3. On 29-06-2007 the petitioners filed written statement opposing the suit claim. Issues were framed and trial has commenced.

4. Thereafter on 11-08-2014, I.A.No.613 of 2014 was filed by petitioners seeking amendment of written statement seeking deletion of certain words in the original written statement and substitution of certain matter in the original written statement. This was opposed by respondent.

5. By order dt.02-09-2014, the Court below dismissed the said I.A. holding that the suit is coming up for evidence of the petitioners and at that stage, this

application was moved by petitioners. It held that the application is highly belated and the proposed amendment would lead to denovo trial and is impermissible.

6. Challenging the same, this Revision is filed.

7. The learned counsel for petitioners contends that even if the amendment of written statement is allowed, no prejudice is caused to respondent and the Court below therefore ought to have allowed I.A.No.613 of 2013 and permitted the petitioners to amend their written statement.

8. Order VI Rule 17 of CPC after it was amended by the Code of Civil Procedure Amendment Act 22 of 2002, states:

*“ 17. **Amendment of pleadings**, the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

Provided 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.”

9. The proviso to Order VI Rule 17 CPC, after its amendment in 2002, therefore placed a bar on allowing application for amendment to pleadings after the trial has commenced, unless the Court comes to a conclusion that

in spite of due diligence, the party could not have raised the matter before commencement of trial.

10. In the affidavit filed in support of the application for amendment, there is no averment regarding due diligence of petitioners at all. Since admittedly trial has commenced, in view of the bar contained in the proviso to Order VI Rule 17 CPC, I am of the opinion that the amendment of written statement, sought for by petitioners, was rightly disallowed by the Court below.

11. I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India. The Civil Revision Petition accordingly fails and it is dismissed at the stage of admission. No costs.

12. As a sequel, all miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 20-01-2015

VSV