

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

CIVIL REVISION PETITION No.2152 of 2015

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ORDER:

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This Civil Revision Petition is filed challenging the order dt.23-04-2015 in I.A.No.217 of 2015 in O.S.No.58 of 2012 of the I Additional District Judge at Khammam.

2. The petitioner herein is 1st defendant in the suit. The 1st respondent herein filed the said suit for specific performance of an agreement of sale dt.26-09-2012 allegedly executed by petitioner in her favour
3. Written statement was filed by petitioner denying the execution of the suit agreement of sale.
4. Issues were framed and trial commenced. The plaintiff filed affidavit in lieu of chief-examination on 06-08-2014 and shortly thereafter even marked Exs.A-1 and A-2 and the matter was posted for cross-examination of P.W.1 by the petitioner.
5. After taking few adjournments, on 19-01-2015 the petitioner filed I.A.No.217 of 2015 to amend the written

statement by adding a paragraph taking an additional plea that 1st respondent had no capacity to purchase the suit schedule property.

6. In the affidavit filed in support of the said application, the petitioner merely stated that in the earlier written statement some facts were not mentioned; such omission would be detrimental to his interest; and for a just disposal of the suit, he may be permitted to amend the written statement.

7. This application was opposed by 1st respondent. The

1st respondent contended that the allegations now made are inconsistent with the averments made earlier, that it is an after thought and the petitioner is not entitled to take such a defence since he did not touch this defence in the original written statement.

8. By order dt.23-04-2015, the Court below dismissed I.A.No.217 of 2015. It held that there were several opportunities to petitioner to raise this additional plea but he did not utilize it though he is fully aware how the proceedings are going on. It held that there was no due diligence on the part of petitioner. It held that plaintiff had examined P.W.1 and exhibited Exs.A-1 and A-2 and

defendant, without cross-examining P.W.1, got the matter adjourned. In view of the fact that the trial commenced long back and in the absence of due diligence on the part of petitioner, application for amendment cannot be considered.

9. Challenging the same, this Revision is filed.

10. The learned counsel for petitioner Sri P.Rama Sharana Sharma contended that petitioner had only taken an additional plea which could not cause any prejudice to 1st respondent and that the Court below erred in dismissing the application for amending the written statement. He relied upon the decisions in **Andhra Bank Vs. ABN Amro Bank N.V. and others**^[1], **Chander Kanta Bansal Vs. Rajinder Singh Anand**^[2] and **Revajeetu Builders and Developers Vs. Narayanaswamy and sons and others**^[3] and contended that application filed by petitioner for amendment of written statement was *bona fide* and it would not cause any injustice to 1st respondent nor would alter the nature and character of the suit.

11. In **Andhra Bank** (1 supra), the Supreme Court observed that delay is no ground for refusal of prayer for amendment. But the said case arose out of a suit of the

year 1998 and was not a case arising after the proviso to Order VI Rule 17 C.P.C. had been introduced by the Code of Civil Procedure (Amendment) Act, 2002 (Act 22 of 2002), which came into effect from 01-07-2002. Therefore, the observations therein cannot help the petitioner.

12. In **Chander Kanta Bansal** (2 supra), the Supreme Court observed that the proviso to Order VI Rule 17 C.P.C. introduced by Act 22 of 2002 to some extent limit the scope of amendment of pleadings, but would still vest enough powers in Courts to deal with the unforeseen situations whenever they arise. It held that the reason for adding the proviso is only to curtail the delay and expedite the hearing of the case. In the said case also, the amendment of written statement was sought in a suit which had been filed in 1986 prior to Act 22 of 2002 coming into force on 01-07-2002. In spite of this fact, the Supreme Court held that application for amendment was filed only after 18 years and that the delay and laches on the part of parties to proceedings would also be a relevant factor for allowing or disallowing an application for amendment of the pleadings. It was also a case where the Court found that by way of amendment, the defendant wanted to retract what she pleaded in the written statement. It therefore held that such applications filed for

amendment without substantiating the inordinate delay without giving reason after closing of evidence and arguments, cannot be allowed. Therefore, this decision also does not help the petitioner.

13. In **Revajeetu Builders and Developers** (3 supra), no doubt the Supreme Court had observed at paragraph-63 that certain principles should be kept in mind while allowing or rejecting the application for amendment and enumerated them as follows :

“63. ...

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

14. But even the said case arose out of a suit filed in the year 1996 before the amendment to the Code of Civil Procedure in the year 2002. The Supreme Court held that

the proviso introduced by the said amendment would apply only after the trial has commenced and not prior thereto.

15. Therefore, the above principles laid down in these cases would certainly apply if application for amendment had been sought before trial has commenced. They would apply even in respect of application for amendment sought after the trial has commenced, provided the applicant for amendment establishes that in spite of due diligence, he could not raise this matter before the trial commenced.

16. In the present case, the affidavit filed by petitioner itself does not disclose the reason why the petitioner could not have raised this plea before commencement of trial. Therefore, it is clear that the petitioner had not pleaded that in spite of due diligence he was disabled from bringing up the matter before commencement of trial. So, the petitioner cannot be allowed to amend the written statement taking additional plea.

17. I therefore do not find any merit in the Revision and it is accordingly dismissed. No costs.

18. As a sequel, miscellaneous petitions pending if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 01-09-2015
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[\[1\]](#) AIR 2007 SC 2511
[\[2\]](#) (2008) 5 SCC 117
[\[3\]](#) (2009) 10 SCC 84