

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.02.2016

Pronounced on : 10.02.2016

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

**C.R.P.PD.No.425 of 2013
and
M.P.No.1 of 2013**

Lakshmanan

... Petitioner

Vs.

Mani

... Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India against the order dated 03.07.2012 passed in I.A.No.361 of 2012 in O.S.No.288 of 2009 on the file of the Learned Principal District Munsif at Kallakurichi.

For Petitioner : Mr.N.Ramesh

For Respondent : Mr.K.Venkatasubban
for M/s.Sarvabhauman Associates

ORDER

The Petitioner/Defendant has preferred the instant Civil Revision Petition before this Court as against the order dated 03.07.2012 in I.A.No.361 of 2012 in O.S.No.288 of 2009 passed by the Learned

Principal District Munsif, Kallakurichi.

2.The Learned Principal District Munsif, Kallakurichi, while passing the impugned order on 03.07.2012, in I.A.No.361 of 2012 in O.S.No.288 of 2009 (filed by the Petitioner/Defendant), at paragraph 5, had, inter alia, observed that '... In the chief examination of D.W.1, amendment cannot be carried out. Presently, there would be no use in amending the written statement. Though the date of discharge was a necessary fact of the case, since the enquiry was over in regard to the Discharge, the present petition was not to be allowed. It would create a new case' and finally dismissed the petition without costs.

3.The Learned Counsel for the Petitioner/Defendant contends that the impugned order of the trial Court in I.A.No.361 of 2012 in O.S.No.288 of 2009 dated 03.07.2012 is an erroneous one, besides the same being contrary to law and against facts of the case.

4.According to the Learned Counsel for the Petitioner, the trial Court had failed to take into account that the amendment sought for in I.A.No.361 of 2012 in O.S.No.288 of 2009 did not raise a 'New Case' or 'Any Alternative Plea'. As a matter of fact, because of the creeping in the simple typographical error in amendment in question was sought

for by the Petitioner/Defendant.

5.The Learned Counsel for the Petitioner submits that the Petitioner/Defendant filed I.A.No.361 of 2012 to amend the 'date of discharge of loan' in the written statement and in the proof affidavit. In reality, the actual date to be mentioned was 30.12.2008. But inadvertently and incorrectly the date i.e. 07.06.2003 was mentioned and hence, the amendment application/petition in I.A.No.361 of 2012 in O.S.No.288 of 2009 was filed. Unfortunately, the trial Court had dismissed the application based on erroneous reason.

6.Advancing his arguments, the Learned Counsel for the Petitioner emphatically takes a plea that by allowing the amendment application in I.A.No.361 of 2012 in O.S.No.288 of 2009, no prejudice or injustice would be caused to the Respondent/Plaintiff and further that, 'amendment of pleading' is only a matter of procedure and that the procedural law is intended to facilitate and not to obstruct the path of 'substantive justice'.

7.Finally, it is the stand of the Petitioner that Order 6 Rule 17 C.P.C. enjoins that the Court may any stage of the proceedings allow either party to alternate or amend the pleadings in such manner and

on such terms as may be just and necessary for the purpose of determining the real questions in controversy between the parties. Furthermore, it is the duty of a Court of Law not to harp on technicalities but to exercise its inherent power to advance the cause of justice.

8.The Learned Counsel for the Petitioner, in support of the contention that a typographical error that has crept in, in regard to the date of discharge of loan, in the instant case, can be corrected by a Court of Law by means of filing of an application by the party concerned, places reliance on the order of this Court ***dated 08.07.2015 in C.R.P.(PD).No.2224 of 2013 (between R.Shanmuga Sundaram V. R.Ponnusamy)***, whereby and whereunder, at paragraph 3 to 5, it is observed and held as follows:

"3.Heard the learned counsel appearing for the revision petitioner and the learned counsel for first respondent and also perused the original plaint produced by him, and on perusal of the same, it could be seen that in the cause of action para, the plaintiff has stated that the agreement was entered into on 16.09.2004. That apart, in the list of documents also, the plaintiff produced the

registered sale agreement, dated 16.09.2004. Whereas, in para No.1 of the plaint, the plaintiff wrongly stated that, during the first week of November, 2004, the first defendant met him and expressed his desire to sell the suit property, but actually, it was during the month of September, 2004, the first defendant met the plaintiff. Thus, on a reading of the averments stated in para No.1 of the plaint, it is clear that instead of mentioning the month as "September", it has been wrongly mentioned as "November", which fact is also supported by averments stated in the cause of action para, as stated above, and also in the list of documents, wherein, the plaintiff produced the agreement, dated 16.09.2004. The case of the plaintiff is that the said mistake has crept in due to typographical error, and he wants to rectify the same and for that purpose, the application has been filed.

4.The case of the plaintiff can be accepted taking note of the fact that there are averments in the plaint with regard to the date of execution of the agreement. Though the application has been filed at a

belated stage, I am of the view that, no prejudice would be caused to the respondents/defendants, if the application for amendment is allowed. That apart, the defendants have not raised any issue with regard to the date of execution of the agreement in the written statement and their only plea is that the agreement was entered into for different purpose.

5. In such circumstances, I am convinced that amendment sought for by the revision petitioner/plaintiff is only due to the typographical error that has crept in the plaint. In such circumstances, the fair and decretal order passed in I.A.No.707 of 2012, in O.S.No.72 of 2007, are set aside and the Civil Revision Petition is allowed and the application in I.A.No.707 of 2012, stands allowed. Since the suit is pending from the year, 2007, I direct the learned I Additional Subordinate Judge, Coimbatore, to dispose of the suit in O.S.No.72 of 2007, on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected

Miscellaneous Petition is closed."

9.Per contra, it is the submission of the Learned Counsel for the Respondent/Plaintiff that it was not true to state that the mistakes mentioned in I.A.No.361 of 2012 in O.S.No.288 of 2009 came to light only when examination of witnesses on Plaintiff side. Further, the Revision Petitioner/Defendant had filed the written statement and when the trial of the case presently was proceeding to state that the mistakes came to light only now, were not acceptable one. Further, the Petitioner/Defendant was negligent and only to cause heavy hardship and loss to the Respondent/Plaintiff, has filed the present amendment petition under Order 6 Rule 17 C.P.C., whereby and whereunder, he had sought for an amendment to be made in the written statement and also in the proof affidavit.

10.The Learned Counsel for the Respondent/Plaintiff cites the decision of the Hon'ble Supreme Court in ***Rajkumar Gurawara V. S.K.Sarwagi and Company Private Limited and another, (2008) 14 Supreme Court Cases 364*** at page 365 wherein it is held as follows:

"It is settled law that the grant of application for amendment shall be subject to certain conditions, namely,

(i)when the nature of it is changed by permitting amendment; (ii) when the amendment would result in introducing new cause of action and intends to prejudice the other party; and (iii) when allowing amendment application defeats the law of limitation.”

11.He also relies on the Judgment of the Hon'ble Supreme Court in ***Baldev Singh and others V. Manohar Singh and another, reported in MANU/SC/8831/2006 (decided on 03.08.2006) :2006 (64) ALR 895***, wherein at paragraph 16 and 17, it is held and observed as follows:

"16.This being the position, we are therefore of the view that inconsistent pleas can be raised by Defendants in the written statement although the same may not be permissible in the case of plaintiff. In the case of Modi Spinning and Weaving Mills Co. Ltd. and another v. Latha Ram and Co. MANU/SC/0012/1976 : (1976) 4 SCC 320, this principle has been enunciated by this Court in which it has been clearly laid down that inconsistent or alternative pleas can be made in the written statement. Accordingly, the High

Court and the Trial Court had gone wrong in holding that Defendants/Appellants are not allowed to take inconsistent pleas in their defence.

17. Before we part with this order, we may also notice that proviso to Order 6 Rule 17 of the Code of Civil Procedure provides that amendment of pleadings shall not be allowed when the trial of the Suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the Suit. From the record, it also appears that the Suit was not on the verge of conclusion as found by the High Court and the Trial Court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted hereinafter, parties are yet to file their documents, we do not find any reason to reject the application for

amendment of the written statement in view of proviso to Order 6 Rule 17 of the Code of Civil Procedure which confers wide power and unfettered discretion to the Court to allow an amendment of the written statement at any stage of the proceedings."

12.In the instant case, it is brought to the notice of this Court that on the side of Respondent/Plaintiff, the examination of witnesses was over and further that, the Revision Petitioner/ Defendant had filed a proof affidavit (chief examination) and cross examination is to be conducted. At that time only, the Revision Petitioner/Defendant had filed I.A.No.361 of 2012 seeking amendment of the written statement and the proof affidavit wherein he had mentioned the date of discharge of loan as 30.12.2008 instead of the date 7.6.2003.

13.It is to be noted that an amendment which, if allowed, would take away a valuable right of the other side and would constitute an altogether new plea, cannot be permitted, as per decision of the Hon'ble Supreme Court in ***Jagan Nath V. Chandra Bhan*** reported in ***AIR 1988 SC 1366***. It cannot be gainsaid that a Court of Law would, as a rule refuse to allow amendments, if a fresh suit on the amended

claim would be barred by limitation on the date of the application. However, that is a factor to be taken into consideration in exercise of the discretion as to whether an amendment should be ordered, and does not affect the power of the Court to order it, if that is required in the interests of justice. It is to be remembered that the wider the discretion conferred on a Court of Law under Order 6 Rule 17 of Civil Procedure Code, the greater ought to be the care and circumspection on the part of the Court.

14.As far as the present case is concerned, in the reply notice dated 29.04.2009 issued by the Advocate of the Revision Petitioner/Defendant (addressed to the Respondent/Plaintiff's Advocate), it was, among other things, mentioned that '... The Petitioner/Defendant based on the compulsion of the Respondent/Plaintiff on 07.06.2003 had executed two promissory notes for Rs.39,500/- and thereafter on 27.05.2006, a sum of Rs.500/- was paid by the Petitioner/Defendant and subsequently on 30.12.2008 for the aforesaid Rs.19,750/-, interest of Rs.3/- was calculated and settled' etc. Therefore, it is latently and patently quite clear that the Revision Petitioner/Defendant had, in a crystalline fashion, mentioned only the discharge date as 30.12.2008 and in this regard has laid a foundation. Only in the

written statement and proof affidavit of the Petitioner/Defendant, the date of discharge was mentioned as 07.06.2003, which according to the Revision Petitioner/Defendant, is a mistake. Inasmuch as the correct date of discharge, in the reply notice dated 29.04.2009 of the Revision Petitioner/Defendant's counsel, was rightly mentioned as 30.12.2008 and since in the written statement and the proof affidavit filed on behalf of the Petitioner/Defendant, it was mentioned as 07.06.2003, which according to the Petitioner/Defendant, is a mistake, this Court opines that by allowing the I.A.No.361 of 2012 filed by the Petitioner/Defendant before the trial Court would not make out a new case, because of the reason at the earliest point of time, in the reply notice issued by the Petitioner/Defendant's Advocate dated 29.04.2009, the Petitioner/Defendant had set out his original defence viz., the date of discharge of loan on 30.12.2008. Admittedly, the Respondent/Plaintiff's side evidence was completed in the main suit (by examination of witnesses P.W.1 to P.W.3) and now the proof affidavit of the Petitioner/Defendant as D.W.1 (in chief) was filed before the trial Court. What remains now is only the cross examination of D.W.1 (Revision Petitioner/Defendant) to be conducted.

15.At this stage, this Court opines that by allowing the

I.A.No.361 of 2012 filed by the Petitioner/Defendant, the same would not cause any prejudice to the Respondent/Plaintiff, since the amendment in I.A.No.361 of 2012 filed under Order 6 Rule 17 of Civil Procedure Code is just and necessary for the purpose of resolving the real question in controversy between the parties. As such, the contra views taken by the trial Court in I.A.No.361 of 2012 on 03.07.2012 to the effect that '... In the chief examination of D.W.1, amendment cannot be carried out. Presently, by amending the written statement, there would be no use. Although the 'date of discharge' was a necessary fact for the case, since the enquiry was completed in regard to the 'Discharge', the petition was not to be allowed. It would make out a new case' are *per se* not legally tenable. Therefore, this Court, in the interest of Justice, interferes with the said order dated 03.07.2012 in I.A.No.361 of 2012 in O.S.No.288 2009 passed by the Learned Principal District Munsif, Kallakurichi and sets aside the same. Consequently, the Civil Revision Petition succeeds.

16.In fine, the Civil Revision Petition is allowed. The order dated 03.07.2012 in I.A.No.361 of 2012 in O.S.No.288 of 2009 passed by the trial Court is hereby set aside by this Court for the reasons assigned in this Revision. Resultantly, I.A.No.361 of 2012 is allowed.

Since the main suit is of the year 2009 and is in Part-Heard stage, this Court, on the basis of Equity, Fair Play and Justice, directs the trial Court viz., the Learned Principal District Munsif, Kallakurichi, to dispose of the main suit in O.S.No.288 of 2009 in a dispassionate manner, (uninfluenced and untrammelled with any of the observations made by this Court in this Revision), of course after providing adequate opportunities to respective sides by adhering to the principles of Natural Justice, within a period of three months from the date of receipt of copy of this order. Liberty is granted to the respective parties to raise all factual and legal pleas in the main suit in accordance with Law. No costs. Consequently, connected Miscellaneous Petition is closed.

10.02.2016

Index :Yes

Internet :Yes

Sgl

To

The Principal District Munsif,
Kallakurichi.

M.VENUGOPAL,J.

Sgl

**ORDER IN
C.R.P.(PD).No.425 of 2013**

10.02.2016