

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.2028 of 2015

ORDER :

The plaintiff-Hindustan Petroleum Corporation Limited, maintained the suit against the defendants 1 and 2, the landlords of the suit premises, in claiming that pursuant to the lease deed/agreement dated 31.10.2003 and sub-lease agreement dated 17.11.2003 which are for a period of 10 years from the original date of commencement. There is an extending clause for further two terms, five years each, upto 2033 and thereby sought the relief of specific performance of the said terms of the lease agreement.

2) It is pending suit, after trial is commenced undisputedly, plaintiff sought for amendment to incorporate additional relief of perpetual prohibitory injunction and the said application for amendment was dismissed by the trial Court by impugned order dated 25.02.2015 in I.A. No.26 of 2015 for no due diligence as required to proviso to Order VI Rule 17 C.P.C.

3) The contentions, in the grounds of revision impugning the same, are that the trial Court should have seen that there are no latches on the part of the plaintiff but for the evidence subsequently arisen, particularly of the defendants choose to interfere to dispossess and started

demolition of part of the structures and thereby they maintained temporary injunction application and those were ended in dismissal, saying no prima facie case they made them to seek the amendment to incorporate the additional relief for the plaintiff.

4) Heard both sides and perused the material on record.

5) The proviso to Order VI Rule 17 C.P.C with effect from 01.07.2002 as per C.P.C amendment mandates the requirement of due diligence, once trial is commenced. Undisputedly trial is commenced. So far as the due diligence, it is not the case of the plaintiff that it is a subsequent cause of action accrued from any subsequent event but for saying after filing temporary injunction application and its dismissal, they thought of couching the additional relief that cannot be construed as a subsequent cause of action muchless as a subsequent event even to water down the concept of due diligence after commencement of trial.

6) Having regard to the above, if at all the temporary injunction applications ended in dismissal, the matters are subject matter of the appeal before the IV Additional District Judge against the orders of the learned VI Additional Junior Civil Judge, Visakhapatnam, they can agitate the same there on the legality and correctness. However, the dismissal of the applications when does not give an

independent cause of action for the relief sought in the
plaint for amendment muchless as a subsequent event
and on its face when there is no due diligence, there is
nothing for this Court, within the limited scope, by sitting in
revision against the impugned order of the lower Court.

7) In the result, the revision petition is dismissed.
There shall be no order as to costs. Pending
miscellaneous petitions, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

23.08.2016
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