

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 2360 OF 2016

ORDER:

This Civil Revision Petition is directed against the order dated 11.03.2016 in I.A.No. 625 of 2015 in O.S. No. 176 of 2009 on the file of the Principal Junior Civil Judge's Court at Kovur.

Respondents 1 and 2 herein are the plaintiffs. They filed the suit seeking a direction to the 1st defendant therein, who is the petitioner herein, to pay a sum of Rs.96,000/- recurring annual maintenance at the rate of Rs.4,000/- per month to each plaintiff and to create 1st charge over the plaint schedule property for due recovery of decree amount for which the plaintiffs are entitled to recover under the decree. Subsequently, Respondents 1 and 2 have taken out I.A.No. 625 of 2015 under Order VI Rule 17 of the Code of Civil Procedure seeking certain amendments to the plaint averments, particularly enhancement of the maintenance amount at Rs.10,000/- to each of them and the recurring amount from Rs.96,000/- to Rs.2,40,000/-. That I.A. was allowed by the learned Principal Junior Civil Judge, by the order dated 11.03.2016 impugned in this Writ Petition.

Learned counsel for the petitioner challenges the impugned order mainly on the ground that the suit is coming up for arguments and at this stage, Respondents 1 and 2 have filed the I.A. only to protract the matter and thereby, to harass the petitioner. Further, contends the learned counsel, that the petitioner is a teacher on the verge of retirement and he has been getting a monthly salary of Rs.31,000/-, from out of which, he has to meet the expenses for his old-aged parents, hence, the

enhancement of the maintenance amount, as sought for through the amendment, is not at all justifiable. According to the learned counsel, the purport of Order VI Rule 17 of the Code itself would be defeated, if the amendment is allowed at the stage when the suit was listed for arguments.

Learned counsel for Respondents 1 and 2 submits that the 2nd respondent is prosecuting B.Tech course and at least, to meet her educational expenses, the amount of maintenance has to be enhanced, therefore, in those circumstances, the order impugned does not warrant any interference.

A glance at the material papers annexed to the affidavit filed in support of this Revision discloses that Respondents 1 and 2 filed M.C.No. 28 of 2009 on the file of the Additional Judicial Magistrate of I Class, Kovur, wherein, a maintenance of Rs.3,000/- and Rs.2,000/- respectively was granted to them, which amount was enhanced to Rs.4,000/- and Rs.6,000/- in CrI.M.P.No. 5757 of 2013 by the order dated 12.11.2014. Without complying with the said direction, the petitioner preferred C.R.P.No. 71 of 2014 and the same is pending on the file of the V Additional District Judge, Nellore. This itself shows that the petitioner has not been paying the amount of maintenance to Respondents 1 and 2 at the enhanced rate.

Now, coming to the present Application, Respondents 1 and 2 have moved the same to bring certain amendments to the plaint. While dealing with the same, the Court below has relied upon the judgment rendered by this Court in **Pattan Babukhan v. Thummala Seshureddy** (2015(2) ALT 697), wherein it has been

held that amendment be allowed, if it is necessary to decide the real dispute between the parties. It has been further held that mere change of extent of property mentioned in the plaint schedule would neither change the cause of action nor the nature of the suit. Here, in the instant case, the amendment sought for does not change the nature and character of the suit and it will not prejudice the case of the respondents therein and that if the amendment is refused, it would lead to multiplicity of proceedings, thus holding, the learned Senior Civil Judge has allowed the I.A.

Order VI Rule 17 of the Code, which deals with the amendments, may be noticed:

“ The Court 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.”

Though the *proviso* attached thereto clearly mandates that *no Application for amendment shall be allowed if the trial has commenced, unless the Court comes to the conclusion that in spite of the due diligence, the party could not have raised the matter before the commencement of trial*, it has to be seen here, at this stage, that Respondents 1 and 2 have sought for amendment of the pleadings relating to the maintenance, keeping in view the amounts that are going to be expended in their day to day living. The Courts are not obliged to grant the amount on mere asking. A duty is cast upon

them to award just maintenance taking into account and consideration the income of the parties, properties, if any owned by them apart from the cost of living prevailing at the relevant period of time. The petitioner is always at liberty to substantiate his case by placing before the Court the necessary documents. Hence, the apprehension aired by the petitioner that mere allowing the Application seeking amendment would amount to allowing the suit itself, does not have any basis.

In view of the above, this Court does not find any merit warranting interference with the order of the learned Junior Civil Judge. Hence, the Civil Revision Petition is dismissed. No costs.

Consequently, the miscellaneous applications, if any shall also stand dismissed.

12th September 2016

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CHALLA KODANDA RAM, J