

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.5032 of 2016

ORDER:

Heard learned counsel for the petitioner and perused the records. In spite of service of notice, there is no representation on behalf of the respondents.

2. The present revision is filed under Article 227 of the Constitution of India assailing the order and decree dated 01.08.2016 passed in I.A.No.50 of 2015 in I.P.No.34 of 2013 on the file of Additional Senior Civil Judge, Tirupati, wherein the application under Order VI Rule 17 read with Section 151 of the Civil Procedure Code (for short, 'C.P.C.') for amendment of petition schedule property was rejected.

3. The facts in issue are as under:

The petitioner filed I.P.No.34 of 2013 seeking to pass an order in favour of the petitioner and against the respondents as under:

- a) adjudicating the first respondent as an insolvent and vest the petition schedule property of the respondents in the hands of official receiver, Chittoor;
- b) annul the registered sale deed dated 18.03.2013, vide doc.No.1628 of 2013 as well as G.P.A. dated 13.02.2013 executed by respondent Nos.1 and 2 in favour of respondent Nos.3 and 4 in respect of the petition schedule property as null and void;

- c) directing the official receiver to take possession of the petition schedule property and administer the same for the benefit of creditors;
- d) directing the respondents to pay the costs of the petition to the petitioner;
- e) pass such other and further order as this Hon'ble Court deem fit and proper in the circumstances of the case.

Pending the said petition, the petitioner preferred I.A.No.50 of 2015 seeking to amend the schedule property of the main I.P. It is stated that while he was verifying the petition copy to prepare chief affidavit, he found the description of the schedule mentioned in the petition as incorrect as it does not match with the schedule mentioned in the legal notice dated 27.04.2013. Immediately he filed an application to amend the schedule to the main petition. It is stated that the non-mentioning of correct schedule in the main petition is neither willful nor wanton. It is the case of the petitioner that the amendment sought by him does not change the character of the petition and no prejudice would be caused to the parties. A counter came to be filed opposing the same. It has been contended that in order to prolong the litigation the said application was filed. After considering the rival submissions made, the trial Court rejected the application on the ground that the said application came to be filed after a lapse of 90 days and that the amendment sought by the petitioner would cause prejudice to the respondents.

4. Order VI Rule 17 of C.P.C. categorically states that 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 question in controversy between the parties. Proviso to Order VI Rule 17 of CPC states that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial. In the instant case, it is not in dispute that the trial has not yet commenced. The discrepancy in the schedule came to be noticed by the petitioner when he was preparing chief affidavit. It is also to be noted that by carrying out necessary changes in the petition, no prejudice would be caused to any of the parties. Further, it appears that the act of the petitioner in preferring the IA is neither willful nor wanton.

5. In view of the above circumstances, the C.R.P. is allowed and the order and decree dated 01.08.2016 passed in I.A.No.50 of 2015 in I.P.No.34 of 2013 on the file of Additional Senior Civil Judge, Tirupathi, is set aside. No costs.

6. As a sequel thereto, Miscellaneous Petitions, if any, pending, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

02.12.2016
vnb