

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3999 of 2011

ORDER:

-
-

This civil revision petition under Article 227 of the Constitution of India by the unsuccessful petitioner/plaintiff is directed against the orders dated 18.08.2011 of the learned II Senior Civil Judge, City Civil Court, Hyderabad passed in IA.no.479 of 2011 in OS.no.473 of 2010 filed under Order VI Rule 17 of the Code of Civil Procedure, 1908 ('the Code', for brevity) requesting to permit to amend the plaint in the interests of justice for correcting the loan amount advanced as Rs.2,00,000/-instead of Rs.3,35,938/- wherever mentioned in paragraphs 1 to 3 of the plaint.

2. I have heard the submissions of the learned counsel for the revision petitioner/plaintiff ('the plaintiff', for brevity) and the learned counsel for the respondents/defendants ('the defendants', for brevity). I have perused the material record.

3. The case of the plaintiff Bank in support of the request seeking the above said amendment, in brief, is this:

The plaintiff Bank had brought the suit for recovery of the loan amount with interest and costs. The total loan amount due as per the valuation mentioned in the plaint is Rs.3,35,938/-. In the plaint instead of mentioning the loan amount sanctioned and availed as Rs.2.00 lakhs, Rs.3,35,938/- was mentioned as the loan amount advanced; and that the said mistake is a typographical error, which had occurred while preparing the plaint; and that the said mistake had occasioned on account of mistaking the total suit amount due and recoverable as the loan amount advanced; and that in fact the outstanding amount is Rs.3,35,938/- whereas the loan amount advanced is Rs.2.00 lakhs; and that the said mistake committed was not due to either willful or wanton reasons; and that if the mistake is not permitted to be corrected, the plaintiff Bank would be put to serious and irreparable loss.

Hence, the aforementioned application for amendment of the plaint is filed by the plaintiff Bank.

4. The case of the 1st defendant is this: 'The plaintiff Bank having filed the suit for recovery of Rs.3,35,938/- is now alleging that the personal loan sanctioned was wrongly mentioned as Rs.3,35,938/- instead of mentioning as Rs.2.00 lakhs and that the outstanding amount is Rs.3,35,938/-. The said allegations are false. When a responsible officer of the Bank has verified the plaint before filing the suit, the said mistake cannot be considered as a typographical mistake. Therefore, the contention that the mistake in mentioning the amount advanced is a typographical mistake is baseless. After the cross-examination of PW1, the application for amendment of the plaint is filed with a *mala fide* intention and to cover up the points gained in the cross-examination of PW1 and to demolish the cross-examination. PW1 had also stated in his cross-examination that the contents of the Chief affidavit are also true; therefore, the amendment cannot be permitted, more particularly, as the plaintiff is debarred from seeking the amendment after the commencement of the trial, in view of the proviso appended to Order VI Rule 17 of the Code.

5. I have bestowed my attention to the facts and the submissions.

6. In view of the contention that after commencement of the trial, the amendment cannot be permitted in view of the proviso to Order VI Rule 17 of the Code, it is profitable to refer to the said proviso, which reads as under:

“Provided 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.”

It is also profitable to refer to the legal position obtaining.

6.1 In **Signam Uma v. Signam Rajeswaramma**^[1] relied upon by the learned counsel for the defendants, this Court had held that any amendment, which, if permitted, would change the entire cause of action, cannot be allowed as such a course would cause grave injustice to the opposite party.

In **Rajkumar Gurawara (dead) through L.Rs v. S.Sarwagi and Company Private Limited and Another**^[2], the Supreme Court having referred to Order VI Rule 17 of the Code had held as follows:

“Further, it is relevant to point out that in the original suit, the plaintiff prayed for declaration of his exclusive right to do mining operations and to use and sell the suit schedule property and in the petition filed during the course of the arguments, he prayed for recovery of possession and damages from the second defendant. It is settled law that the grant of application for amendment 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; (iii) when allowing amendment application defeats the law of limitation.”

In **VIDYABAI V/s. PADMALATHA**^[3] the Supreme Court observed that proviso to Order VI Rule 17 of the Code is couched in a mandatory form and, therefore, the court’s jurisdiction to allow an application for amendment is taken away there under unless the conditions precedent therefor are satisfied, and that before allowing amendment, the Court must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial and that it is the primary duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties and only if such a condition is fulfilled, the amendment is to be allowed. Thus, the proviso appended to Order VI Rule 17 of the Code was held to restrict the power of the Court and that it placed an embargo on exercise of its jurisdiction and that unless the jurisdictional fact as envisaged therein is found to exist, the court would have no jurisdiction at all to allow the amendment.

In **REVAJEETU BUILDERS V/s NARAYANA SWAMY**^[4], on an analysis of English and Indian case law, the Supreme Court carved out the following principles which should weigh with the Court while dealing with an application for amendment:

- (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.

The Supreme Court had, however, clarified that the above principles were illustrative and not exhaustive.

In **CHANDER KANTA BANSAL V/s. RAJINDER SINGH**^[5], the Supreme Court, taking note of the fact that 'due diligence' has not been defined in the Code, referred to the dictionary meaning of 'diligence' which is to the effect that it means careful and persistent application or effort or a continual effort to accomplish something; care; caution; the attention and care required from a person in a given situation, and observed that 'due diligence' means the diligence reasonably expected from and ordinarily exercised by a person who seeks to satisfy a legal requirement or to discharge an obligation. Reference was also made to 'Words and Phrases' by Dr. J. N. Datta (Permanent Edition 13-A) wherein 'due diligence' was defined in law to mean doing everything reasonable and not everything possible. The Supreme Court, therefore, concluded that 'due diligence' would mean reasonable diligence or such diligence as a prudent man would exercise in the conduct of his own affairs.

Further, in **Abdul Rehman and Another v. Mohd. Ruldu and Others**^[6], the Supreme Court, having taken note of the above provision of law had laid down that it is clear that the parties to the suit are permitted to bring forward amendment of the pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them and that the Courts have to be liberal in accepting the same, if such application for amendment is made prior to the commencement of the trial and that if such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that, in spite of due diligence, the party could not have raised the matter before the commencement of the trial. In the above decision the Supreme Court reiterated the following proposition:

"All amendments which are necessary for the purpose of determining

real questions of controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.”

In the above decision the Supreme Court further referred to the ratio in the decision in **Pankaja and another v. Yellappa**^[7], which runs as follows:

“If the granting of amendment really sub-serves the ultimate cause of justice and avoids further litigation, the same should be allowed.”

In **Pankaja and another v. Yellappa (D) by LRs and others** (supra), the facts are as under: “As per the case of the plaintiffs, the defendant, in violation of the Court order, had further encroached into the suit property. Therefore, the plaintiffs sought for the amendment of the plaint for seeking the reliefs of declaration of ownership and possession of the said encroached area also. The said application was allowed by the trial Court. However, the Principal Civil Judge rejected the application for amendment on the ground that the application for amendment was filed at a belated stage. The High Court dismissed the revision on the said ground and also on the ground that the amendment introduces a different relief than what was originally asked for. The Supreme Court permitted the amendment by allowing the appeals.

In **Sampath Kumar v. Ayyakannu and another**^[8] the facts and ratio are as under: “A suit was brought in the year 1988 for perpetual injunction in respect of an agricultural land. Before the commencement of the trial in the year 1999, the plaintiff had moved the application for amendment of the plaint alleging that during the pendency of the suit, the defendant had forcibly dispossessed the plaintiff in the year 1989. On such averments, the plaintiff had sought for the relief of declaration of title to the suit property and consequential relief of recovery of possession. The defendant had opposed the application of the plaintiff stating that he had perfected title to the property by adverse possession and that the suit is barred by law of limitation and that a valuable right that had accrued to the defendant is being sought to be taken away by way of the proposed amendment. The trial Court had rejected the application for amendment observing that the appropriate course for the

plaintiff was to bring a new suit. The High Court maintained the said order. The Supreme Court while allowing the appeal of the plaintiff had referred to its earlier decisions and had finally held as follows:

8. *Rukhmabai v. Lala Laxminaraya and Ors.*: [1960]2SCR253, this Court has taken the view that where a suit was filed without seeking an appropriate relief, it is a well settled rule of practice not to dismiss the suit automatically but to allow the plaintiff to make necessary amendment if he seeks to do so.

9. Order 6 Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting-forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amendment. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

10. An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation back in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed. (See observations in *Siddalingamma and Anr. v. Mamtha Shenoy*: AIR 2001 SC 2896).

11. In the present case the amendment is being sought for almost 11 years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, the defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new relief which would relate back to the date of the suit and thereby depriving the defendant of the

advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been earned by the defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed.

6.2 On the aspect that the application for amendment is not debarred in view of the *proviso* to Order VI Rule 17, reliance was placed on the decision in **Usha Devi v. Rijwan Ahamd**^[9]. In the said decision, a contention was advanced that the trial of the suit would commence with the settlement of the issues; and, in support of the said contention that the framing of issues marked the commencement of trial of the suit reliance was placed on the decision in **Ajendraprasadji N.Pandey v. Swami Keshavprakeshdasji** [(2006) 12 SCC1]. However, while meeting the said contention, the attention of the Supreme Court was invited to the decision of the Supreme Court in **Baldev Singh v. Manohar Singh** [(2006)6 SCC 498] wherein it was held as follows:

“Before we part with this order, we may also notice that proviso to Order 6 Rule 17 CPC 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 found 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 hereinbefore, 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 CPC which confers wide power and unfettered discretion to the court to allow an amendment of the written statement at any stage of the proceedings.”

Further, the Supreme Court having referred to a three-judge Bench decision in **Sajjan Kumar v. Ram Kishan**^[10], had held as follows:

“Having heard the learned Counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible

failure of justice. Such an error committed by the trial court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if Section 115 Code of Civil Procedure would not have been strictly applicable. It is true that the Plaintiff-Appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself.

Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of the execution in the event of the plaintiff-appellant succeeding in the suit.”

Thus in Usha Devi's case, the Supreme Court, keeping in view of the decision in Sajjan Kumar (supra), held as follows:

“We may clarify here that in this order we do not venture to make any pronouncement on the larger issue as to the stage that would mark the commencement of trial of a suit but we simply find that the appeal in hand is closer on facts to the decision in Sajjan Kumar and following that decision the prayer for amendment in the present appeal should also be allowed.”

7. In the instant case on hand also, the trial has not concluded and the evidence on the side of the plaintiff is not yet closed. The matter has not reached the stage of arguments. Therefore, in the well considered view of this Court, the facts of present case are akin to the facts of the case in Usha Devi (supra) and Sajjan Kumar (supra). Therefore, in the well considered view of this Court, the contention that the *proviso* to Order VI Rule 17 of the Code debars the plaintiff from seeking the amendment is not well founded.

8. The suit amount with interest up to the date of the suit as is evident from the plaint averments is Rs.3,35,938/-. According to the plaintiff Bank, the personal loan amount sanctioned is Rs.2.00 lakhs. As per the submissions, which are undisputed, the loan documents, which are already exhibited, evidence the said fact. It is not the case of the defendants either that they had received the principal loan amount of Rs.3,35,938/-. Therefore, it is obvious that the principal or the advanced amount wherever it is mentioned in paragraphs 1 to 3 of the plaint as Rs.3,35,938/- instead of Rs.2.00 lakhs is a typographical mistake.

9. The learned counsel for the defendant had placed strong reliance on a

decision in **J. Samuel v. Gattu Mahesh**^[11] wherein the Supreme Court considered the meaning and significance of the words 'due diligence' and found on facts that the contention of the appellant in that case that the mistake had occasioned due to a typographical mistake is liable for rejection. A perusal of the facts of the cited case would show that in a suit filed for specific performance based on agreement, by way of a proposed amendment, paragraph 12 was sought to be introduced after paragraph 11 stating that by a typographical mistake a paragraph was omitted to be mentioned in the original plaint. Since the part/portion, which was stated to have been omitted, is not one sentence or a word but is a full paragraph, the Supreme Court found on facts that such an omission cannot be considered as a typographical mistake. Therefore, it appears that the decision in the cited case had turned on facts of the case; and hence, the said cited decision is not helpful to the defendants herein. Be that as it may. The 1st defendant had denied his liability in the written statement. The merits of the amendment or the merits of the defence of the defendants need not be gone into by this Court in this revision petition wherein the subject matter is the plaintiff's entitlement to seek amendment of the plaint in regard to the principal amount that was said to have been advanced. Further, any amendment which is necessary for complete and effective adjudication of the *lis* and which would avoid needless complications at a subsequent stage of the matter is to be allowed. Further, when the proposed amendment is necessary for adjudication of the real questions in controversy between the parties, such an amendment shall be granted by the Court. As per the precedential guidance, the well settled rule of practice is not to dismiss the suit automatically but to allow the plaintiff to make necessary amendment if the plaintiff seeks to do so.

10. Viewed thus, this Court finds that the impugned order refusing to permit the amendment on the ground that the amendment was sought for after the commencement of trial is unsustainable and brooks interference.

11. In the result, the Civil Revision Petition is allowed and the order

impugned is set aside. As a sequel, IA.no.479 of 2011 in OS.no.473 of 2010 is allowed. The trial Court shall now permit the plaintiff to carry out the amendment of the plaint and file a neat copy of the plaint. On filing of such neat copy of the plaint, the trial Court shall give the defendants an opportunity to file additional written statement to answer the averments in the amended plaint.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

27th April, 2016
Vjl

[\[1\]](#) 2014 (6) ALT 810

[\[2\]](#) (2008) 1 Supreme Court Cases 364

[\[3\]](#) (2009) 2 Supreme Court Cases 409

[\[4\]](#) (2009) 10 SCC 84

[\[5\]](#) (2008) 5 SCC 117

[\[6\]](#) 2013(1)ALD 1(SC)

[\[7\]](#) AIR 2004 SC 4102

[\[8\]](#) (2002) 7 SCC 559

[\[9\]](#) (2008) 3 Supreme Court Cases 717

[\[10\]](#) (2005) 13 SCC 89

[\[11\]](#) (2012) 2 SCC 300