

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.6187 of 2012

ORDER:

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This civil revision petition, under Article 227 of the Constitution of India, by the unsuccessful petitioners/plaintiffs is directed against the orders dated 03.11.2012 of the learned District Judge, Guntur passed in IA.no.1816 of 2012 in OS.no.30 of 2010 filed under Order VI Rule 17 and Section 151 of the Code of Civil Procedure, 1908 ('the Code', for brevity) requesting to grant permission to amend the plaint as stated in the affidavit and in the petition list.

2. I have heard the submissions of the learned counsel for the revision petitioners/plaintiffs ('the plaintiffs', 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 plaintiffs as stated by the 2nd plaintiff in the affidavit filed in support of the request for amendment of the plaint, in brief, is this:

The suit is filed against the defendants for recovery/refund of the advance amount of sale consideration covered under the advance sale agreement dated 27.12.2006. The suit is at the stage of arguments. On 27.12.2006, the defendants had agreed to sell Ac.0-63 cents and Ac.0.36 cents (total Ac.0.99 cents) under advance sale agreement dated 27.12.2006 for an amount of Rs.33,00,000/- and received an advance amount of Rs.9,50,000/- towards advance sale consideration. They made the plaintiffs to believe that on 29.11.2006 they had purchased the said Ac.0-63 cents from P. Bhupathi Rao, the original owner. But, the plaintiffs had come to know that the said Bhupathi Rao is not the owner and that one Mary Pushpa, wife of Joseph, is the actual owner of the said extent of property. The said Bhupathi Rao had purchased the said property from the said Mary Pushpa under advance sale agreement dated 17.11.2006 for an amount of Rs.14,49,000/- having paid an advance amount of Rs.3,65,000/-; and in the said agreement

one month time was fixed for payment of the balance sale consideration and get the sale deed registered. Later, the said Bhupathi Rao sold the said land to the defendants on 29.11.2006 under advance receipt; and, later the defendants sold the said land to the plaintiffs basing on the advance sale receipt. The said facts were suppressed and the plaintiffs were misled and were made to believe that the said P. Bhupathi Rao is the original owner. Hence, the plaintiffs did not plead in the plaint that Mary Pushpa was the original owner. Few days back the plaintiffs had come to know of the said fact. The plaintiffs were advised to incorporate the said facts in the plaint by way of proposed amendment. The proposed amendment, if permitted, will not cause any prejudice to the defendants. In the interlocutory orders dated 16.06.2012 passed in IA no. 3445 of 2001, the trial Court pointed out that the plaintiffs did not mention in the plaint that Mary Pushpa is the original owner. There is no wilful negligence in filing the present petition.

4. The case of the defendants in their counter, apart from the denial of the case of the plaintiffs, in brief, is this:

At the time of the bargain itself, the defendants had handed over to the plaintiffs, the sale advance receipt executed by Bhupathi Rao in their favour, the photostat copy of the sale agreement executed by Mary Pushpa in favour of Bhupathi Rao and also the original title deed of Mary Pushpa. The defendants had clearly mentioned the facts. The plaintiffs had filed the Photostat copy of the sale agreement executed by Mary Pushpa in favour of Bhupathi Rao. The plaintiffs could not explain as to how they could get the copy of the said agreement. The said amendment is inconstant with the original pleas and is intended to withdraw the earlier pleas. Both the counsel had advanced arguments in the suit. Petitions filed by the plaintiffs for recalling DW1 were dismissed. At that stage the instant petition is filed by the plaintiffs to protract and delay the proceedings.

5. At the time of enquiry, no oral and documentary evidence was adduced on either side.

6. On merits, the trial Court had dismissed the petition of the plaintiffs.

Therefore, the plaintiffs are before this Court.

7. The learned counsel for the revision petitioners/plaintiffs while reiterating the pleaded case of the plaintiffs had *inter alia* urged as follows:

The suit is filed for recovery/refund of the advance amount paid by the plaintiffs to the defendants under the agreement of sale after having come to know that they made the plaintiffs to believe that Bhupathi Rao was the owner of Ac. 0.63 cents of property. However, during the pendency of the suit, the fact that Mary Pushpa was the original owner and the other facts as stated in the affidavit and the proposed amendment have come to the knowledge of the plaintiffs and hence, the plaintiffs sought for the amendment of the plaint to incorporate in the plaint the true facts as they are seeking refund of the amount paid under the agreement towards advance sale consideration. Since the defendants are not the owners of the property agreed to be sold, the suit is filed for refund/recovery of the advance amount paid with interest and costs. The facts being sought to be introduced by way of proposed amendment are admitted. Therefore, no prejudice would be caused to the defendants, if the amendment of the plaint is permitted. The amendment ought to have been allowed as it is necessary for doing complete justice between the parties. Since the agreement for specific performance is unenforceable for the main relief, the plaintiffs are entitled to seek refund of the advance amount; and if the amendment sought for is not permitted, the defendants may take advantage and it may lead to unjust enrichment of the defendants who had misrepresented the facts and mislead the plaintiffs. On the ground of mere delay the request for amendment of the plaint, which is essential for resolving the controversy cannot be denied. The plaintiffs are interested in the recovery of money and, therefore, they have no intention to drag on the proceedings. But for the facts that have come to the knowledge of the plaintiffs recently, the plaintiffs would have proceeded with the arguments in the suit. The observation of the Court below in its orders that in view of the *proviso* appended to Order VI Rule 17 of the Code, the amendment sought for by the plaintiffs is impermissible and that the plaintiffs are debarred from seeking an amendment are incorrect. The trial Court was

in error in making observations on the merits of the matter and also on the merits of the contentions raised in the proposed amendment. The trial Court ought to have seen that the correctness of the averments in the proposed amendment cannot be prejudged while considering an application, which is filed for seeking amendment of the plaint. The trial Court ought to have permitted the amendment, as allowing the amendment helps in setting at rest the dispute between the parties. The trial Court ought to have seen that since the facts now being pleaded by way of proposed amendment are admitted, no prejudice would be caused to the defendants, if the proposed amendment is allowed. The trial court ought to have seen that if the amendment as proposed is allowed, no right accrued to the defendants would get defeated in view of their defence. The trial court ought to have seen that the amendment is not introducing any change in the nature of the relief or cause of action. The trial Court ought to have seen that the proposed amendment is necessary for the purpose of determining the real questions in controversy and that the proposed amendment sought for satisfies the required factual and legal requirements. The trial court ought to have permitted the amendment of the plaint in the larger interests of doing full and complete justice between the parties and as the proposed amendment is very much necessary for a just and fair adjudication of the issues involved in the suit. The order impugned is contrary to the settled legal position and is, therefore, liable to be set aside.

8. The learned counsel for the defendants while supporting the orders of the Court below and while reiterating the case of the defendants, stated *supra*, would contend as follows:

In their defence in the suit, the defendants had also urged that the plaintiffs after having sought time to pay the balance of sale consideration had backed out as the prices of the properties have come down, and that they had finally failed to pay the balance of sale consideration and perform their part of the contract, and hence, the rights under the agreement are forfeited. As observed by the Court below in the orders, in the interlocutory applications filed in the year 2011 it is specifically stated about the purchase of property by

Bhupathi Rao from Mary Pushpa and the facts are within the knowledge of the plaintiffs even as on 29.11.2011, but the plaintiffs did not take any steps and had waited till the disposal of the interlocutory applications by the trial Court. There are no *bona fides* as the application was filed belatedly. Further, as observed by the Court below in its orders, the amendment is not necessary to decide the real questions in controversy and the amendment application was filed to drag on the proceedings after the arguments are part heard. The proposed amendment, if permitted, takes away the rights that had accrued in favour of the defendants and causes prejudice to them. Hence, the petition seeking amendment is liable to be dismissed. The trial Court had properly appreciated the facts and the legal position obtaining and had rightly dismissed the application of the plaintiffs filed for amendment of the plaint. Hence, the revision is devoid of merit and is liable to be dismissed.

9. I have given earnest consideration to the facts and the submissions. In view of the facts and the rival contentions, it is profitable to refer to the legal position obtaining. Further, 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 necessary to first 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.”

In **J.Samuel and others v. Gattu Mahesh and others**^[1] the Supreme Court while dealing with an application for amendment had held as follows:

“In the given facts, there is a clear lack of “due diligence” and the mistake committed certainly does not come within the preview of a typographical error. The term “typographical error” is defined as a mistake made in the printed/typed material during a printing/typing process. The term includes errors due to mechanical failure or slips of the hand or finger, but usually excludes errors of ignorance. Therefore, the act of neglecting to perform an action which one has an obligation to do cannot be called as a typographical error. As a consequence the plea of typographical error cannot be entertained in this regard since the situation is of lack of due diligence wherein such amendment is impliedly barred under the Code.”

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 Drain-Dyspnea (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, inspite 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. Yellapa**^[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** (7th 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 **State of A.P v. M/s.Pioneer Builders**^[8] it was held as follows:

Principles governing amendment of pleadings are well-settled. Order VI Rule 17 C.P.C. deals with the amendment of pleadings and provides that the Court may at any stage of the proceedings allow either party to alter or amend pleadings in such a 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. It is trite that though an amendment cannot be claimed as a matter of right under all circumstances, yet the power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice. It is equally well-settled that unless serious injustice or irreparable loss is likely to be caused to the other side, the Court should adopt liberal approach and not a hyper-technical approach particularly in a case where the other side can be compensated with costs. Dominant object to allow the amendment in the pleadings liberally is to avoid multiplicity of proceedings (See: L.J. Leach & Co. Ltd. and Anr. v. M/s Jardine Skinner & Co. [AIR 1957 SC 357]; Smt. Ganga Bai v. Vijay Kumar and Ors. [(1974) 2 SCC 303] and B.K. Narayana Pillai v. Parmeswaran Pillai and Anr. [(2000)1 SCC 712]) Nevertheless, one distinct cause of action cannot be substituted for another nor the subject-matter of the suit can be changed by means of an amendment. The following passage from the decision of the Privy

Council in Ma Shwe Mya v. Maung Mo Hnaung A.I.R. 1922 PC 249 succinctly summarises the principle which may be kept in mind while dealing with the prayer for amendment of the pleadings:

“All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit.”

In **Sampath Kumar v. Ayyakannu and another**^[9] 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.

10. Reverting to the instant case facts, what is to be noted is that the suit is a simple suit for recovery/refund of the advance amount paid as advance and part of sale consideration. In the plaint it is *inter alia* alleged that the defendants represented that they jointly purchased Ac.0.63 cents of suit schedule property from P. Bhupathi Rao on 29.11.2006 under advance sale receipt dated 29.11.2006 and that the defendants had purchased the remaining extent of Ac.0.36 cents under a sale deed dated 22.12.2006 and offered to sell the entire schedule mentioned property, that is, Ac.0.99 cents to

the plaintiffs for higher price to get some profit. The defendants while admitting the agreement are denying the right of the plaintiffs to claim the said relief on the grounds that the plaintiffs had failed to perform their part of the contract as the prices of the properties have come down and that the rights under the agreement are forfeited. According to the plaintiffs, they had brought the suit on the belief that Bhupathi Rao was the original owner, but, during the pendency of the suit it came to their knowledge that Mary Pushpa was the original owner and hence they are constrained to seek the amendment. By way of amendment the plaintiffs are not changing the nature of the suit or the cause of action. As per the orders impugned, the plaintiffs came to know about the purchase of property by Bhupathi Rao from Mary Pushpa only after the suit was instituted.

11. Be that as it may, as rightly and fairly conceded, the question whether or not the plaintiffs would be entitled to the relief of recovery of advance amount paid under the suit agreement of sale and the other allied questions cannot be prejudged while considering an application, which is filed for seeking amendment of the plaint. The amendment is being sought based on an event subsequent to the institution of the suit, i.e., the knowledge of the proposed pleaded facts during the pendency of the suit. Even assuming for a moment that the plaintiffs ought to have sought the amendment of the plaint much earlier and not belatedly, what is to be noted is that the proposed amendment is being sought on the basis of knowledge of events subsequent to the institution of the suit. Further, according to the plaintiffs, the defendants by their misrepresentations and misleading statements are responsible for the various events; however, the defendants contend that the facts are made known to the plaintiffs even at the time of the bargain. Even as per the precedential guidance in the decisions of the Supreme Court an amendment can be permitted if it is intended to determine the real question in controversy and that all amendments, which are necessary for the purpose of determining real questions in controversy between the parties, shall be allowed if such amendments sought for do not change the basic nature of the suit. The power of amendment should be exercised in the larger interests of doing full

and complete justice between the parties and that all amendments, which are necessary for the purpose of determining the real question in controversy, should be allowed. Further, if the granting of amendment really sub-serves the ultimate cause of justice and avoids further litigation, the same should be allowed. The Court has also to consider whether the proposed amendment is intended to determine the real dispute between the parties. The law is well settled that all amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. If the amendment as proposed is allowed, no right accrued to the defendants would get defeated as the said defendants are denying the right of the plaintiffs to recover the suit amount. In the well-considered view of this Court, the amendment which is based on events which had come to the knowledge of the plaintiffs subsequent to the institution of the suit, though sought belatedly also helps in avoiding the multiplicity of the proceedings and in setting at rest the dispute between the parties. Therefore, for all the aforesaid reasons, granting of amendment of the plaint really sub-serves the ultimate cause of justice and avoids further litigation and therefore, the amendment sought for by the plaintiffs deserves to be allowed.

12. The decision in **J.Samuel and others v. Gattu Mahesh and others** (1st supra) is relied upon by the learned counsel for the defendants in support of the contention that the amendment cannot be permitted as the plaintiffs could not show that despite due diligence they could not seek the amendment earlier. A plain consideration of the facts of the cited case would show that in a suit filed for specific performance based on an 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 it noted that in the case on hand the amendment is based on a subsequent event i.e., the knowledge of the plaintiffs about the fact that one Mary Pushpa was the actual owner of the property and not Bhupathi Rao as believed by them due to misrepresentation. On the aspect that the application for amendment is debarred in view of the *proviso* to Order VI Rule 17, it is necessary to refer to the decision in **Usha Devi v. Rijwan Ahamd**^[10]. 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**^[11], 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.”

In the instant case on hand though the matter has reached the stage of arguments, in the well considered view of this Court, the facts of the present case are akin to the facts of the case in Usha Devi (supra) and Sajjan Kumar (supra) as the amendment was necessary for bringing to the fore the real question in controversy and as the core facts are not in dispute and are admitted. This Court is also of the considered view that it would be a sound exercise of discretion to permit amendment of the plaint and that on the ground of mere delay amendment cannot be refused. Since the dominant purpose of the Rule is to minimize the litigation and to enable the parties to have all the issues relating to one dispute resolved in one suit, the amendment sought for by the plaintiff can be allowed, in the considered view of this Court. Therefore, in the well considered view of this Court, the contention that the *proviso* to Order VI Rule 17 of the Code debars the plaintiffs from seeking the amendment is not well founded. As per the precedential guidance, the well settled rule of practice is not to dismiss the suit automatically but, to allow the plaintiffs to make necessary amendment if the plaintiffs seek to do so.

13. Viewed thus, this Court finds that the Court below is not justified in not

permitting the plaintiffs to amend the plaint and that the order impugned warrants interference.

14. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, IA no. 1816 of 2012 in OS.no.30 of 2010 is allowed. The trial Court shall now permit the plaintiffs to carry out the amendment of the plaint as prayed for 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

10th June, 2016
Vjl

[\[1\]](#) (2012) Supreme Court Cases 300

[\[2\]](#) (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

[\[8\]](#) 2007(1) ALT 43 (SC)

[\[9\]](#) (2002) 7 SCC 559

[\[10\]](#) (2008) 3 Supreme Court Cases 717

[\[11\]](#) (2005) 13 SCC 89