

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2853 of 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed challenging the Docket Order dt. 18.04.2016 in O.S.No.316 of 2009 on the file of IV Senior Civil Judge, City Civil Court, Hyderabad, whereby the trial Court directed the concerned clerk to return the neat copy of plaint filed by the plaintiff and also to strike off/remove the amendment, which was carried out in the cause title of the plaint on 16.03.2016 on the ground that revision petitioner carried out the amendment without obtaining extension of time, as required under Order 6 Rule 18 of the Code of Civil Procedure ('CPC' for brevity), and that the amendment was not carried out within the time stipulated under Order 6 Rule 18 of CPC i.e., within 14 days from the date of Order.

2. The reason offered by the counsel for revision petitioner is that the matter was carried in appeal and the entire record was lying with the appellate Court, he filed a Memo to call for the record, to enable the revision petitioner to carry out the amendment and that he fairly admitted that the amendment was carried out without the leave of the Court and that too after expiry of 14 days by his junior counsel due to rush of work and paid Court Fee on the proposed amendment and filed amended copy of the plaint before the Court and later he filed an application under Section 148 r/w 151 of CPC, for relaxation of the condition imposed by the trial Court for carrying out the amendment and the same was returned by the trial Court raising an objection about the maintainability of the petition filed under Section 148 r/w 151 CPC

and the copy of the return application is filed along with the present C.R.P.

3. The only contention raised before this Court is that it is a technical lapse on the part of for revision petitioner and that too the reason for such lapse is due to pendency of the appeal before the appellate Court and that entire record was with the appellate Court and therefore, he could not carry out the amendment adhering to the Order 6 Rule 18 CPC i.e., within 14 days from the date of permitting amendment to the plaint, and fairly conceded that one of his junior carried out the amendment in sheer hurry.

4 . Learned counsel for respondent contended that the amendment was carried out without adhering to Order 6 Rule 18 of CPC i.e., within 14 days, and no extension of time for carrying out amendment was obtained by the revision petitioner by filing appropriate application before the trial Court and therefore, there is no illegality in the Docket Order passed by the trial Court. He also brought to the notice of this Court what had happened before the trial Court, I am not concerned with what had happened before the trial Court, during hearing.

5. As seen from the Docket Order passed by the trial Court, the amendment was allowed on 2.12.2011 without fixing any time for carrying out the amendment and in the absence of any time fixed to carry out the amendment, the upper time limit to carry out the amendment is only 14 days, as per Order 6 Rule 18 CPC or the time extended by the Court from time to time. But here, no such extension was granted and admittedly the revision petitioner did not carry out the amendment within 14 days, as contemplated under Order 6 Rule 18 CPC, but carried out amendment even without filing any application for extension of time under Order 6

Rule 18 of CPC and on the other hand, he filed application under Section 148 r/w 151 of CPC. Learned counsel for respondent pointed that such application is not maintainable for extension of time since there is a specific provision i.e., Order 6 Rule 18 CPC for extension of time to carry out the amendment. The revision petitioner did not represent the interlocutory application filed by him under Section 148 r/w 151 CPC though seven days time was granted in I.A.S.R.No. 1752 of 2016 dt. 12.04.2016.

6. On over all consideration of entire material on record, it is evident that there are clear lapses on the part of revision petitioner in carrying out the amendment and one of the reason for failure to carry out the amendment within the time stipulated was due to pendency of the matter before the appellate Court. It is not known whether the entire record was sent within 14 days from the date of Order of amendment or on later date. If the entire record was sent to the appellate court within 14 days permitted under Order 6 Rule 18 CPC, then there is some justification in the contention of learned counsel for revision petitioner and if not, such contention would not stand to legal scrutiny by this Court while exercising power under Article 227 of the Constitution of India. Carry out the amendment without obtaining extension of time as required under Order 6 Rule 18 CPC is a clear illegality committed by the revision petitioner. It appears from the record that the petitioner did not evince any interest to comply the Order passed by the trial Court in I.A.No.91 of 2011, dt. 2.12.2011. It is a known fact that the amendment is to be carried out by an Advocate on record since he has to put an initial after carrying amendment in the plaint and thus, it is clear that lapse is on the part of the Advocate of revision petitioner before the trial Court and for such lapse, the party should not be put to any sufferance. Therefore, considering the

matter in that view, I find that it is a fit case to set aside the Order with a direction to the Revision Petitioner to file appropriate application before the trial Court assigning reasons and on filing such application, the trial Court may consider whether the explanation for delay was really justified in his failure to carry out the amendment within the time stipulated as required under Order 6 Rule 18 CPC after giving an opportunity of hearing both and pass appropriate order, uninfluenced by the observations made by this Court.

7. With the above direction, the Revision Petition is allowed.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 09-08-2016

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