

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITIN No.5146 of 2015

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the petitioner/defendant is directed against the orders dated 17.11.2015 of the learned District Judge-cum-Chairman, Co-Operative Tribunal at Vijayawada holding the Full Additional Charge of the post of the learned XI Additional District Judge, Krishna at Gudivada passed in I.A.No.770 of 2013 in O.S.No.55 of 2010 filed under Order XVIII Rule 17 and Section 151 of Code of Civil Procedure, 1908 to recall PW1 and to permit PW1 to file additional chief-affidavit with proper and correct prayer.

2. I have heard the submissions of learned counsel for the petitioner/defendant (for short, 'defendant') and the learned counsel for the respondent/plaintiff (for short, 'plaintiff').

3. The plaintiff filed the suit for Specific Performance of the suit Contract. The defendant is resisting the suit. At trial, the plaintiff had filed his affidavit in lieu of his examination in chief and, he was cross-examined. His side evidence was also closed. At that stage, the plaintiff had filed the aforesaid application to recall him and permit him to file additional proof affidavit in lieu of further examination in chief. That petition was resisted by the defendant. By the impugned order, the trial Court had allowed the petition. Therefore, the defendant is before this Court.

4. The case of the plaintiff is this: "Though the suit is filed for Specific Performance of the suit Contract and the said aspect is stated in the introductory paragraph of the original affidavit filed in lieu of examination of chief, it is erroneously stated in the concluding paragraph 17 of that affidavit as follows:

“Therefore, I am constrained to file the suit praying the Hon'ble Court to kindly grant a decree for declaration that the demand notice dated 24.07.2006 is illegal, arbitrary, capricious and ultra vires of the provisions of the A. P. Municipalities Act, levying the property tax Rs.3,18,801/- in respect of the entire building, and for consequential relief of injunction restraining the defendant Municipality from collecting the levied tax of Rs. 3,18,801/-, for costs and to grant all such other relief or reliefs, as may be considered just and necessary, in the interests of justice.”

Though the suit is filed for specific performance, the above said prayer is incorrectly stated in the said affidavit. The wrong prayer was inadvertently mentioned in the said affidavit due to a typographical mistake or a mistake in the computer. Unless the said mistake is allowed to be corrected by recalling PW1 and permitting PW1 to file an additional chief affidavit, that mistake would remain fatal to the case of the plaintiff. The said mistake is purely accidental and is not wilful. Obviously, the suit is not filed for declaration in regard to a demand notice, but it is only filed for Specific Performance of the suit Contract of sale; therefore, the plaintiff is obliged to file the petition.”

6. The case of the defendant is as under: “After plaintiff had filed the original affidavit in lieu of examination in chief, he was cross-examined. Cross-examination was also done in regard to the prayer that was mentioned in the said affidavit. After the closure of the evidence of the plaintiff, the present request is being made to recall PW1 and to receive the additional chief affidavit now being filed. Since the original chief affidavit has become part of his evidence, he cannot now be permitted to file an additional affidavit as it would amount to changing the nature of the prayer in the suit and changing the nature of the suit.”

7. On merits, the petition filed by the plaintiff was allowed. Therefore, the defendant having filed this revision would *inter alia* contend as follows: ‘The present application of the plaintiff was filed

after the conclusion of the trial. After the evidence is closed, the plaintiff is not entitled to file the additional affidavit in lieu of additional examination in chief that too for correction of the prayer on the ground that the prayer is wrongly mentioned in the original affidavit filed in lieu of examination in chief. The said application of the plaintiff is intended to fill up the lacunae in the evidence of the plaintiff.' The learned counsel for the defendant while reiterating the grounds urged in the revision and also the case of the defendant, which is extracted supra, would contend that the order impugned is unsustainable. Per contra, the learned counsel for the plaintiff while supporting the orders of the Court below would submit that a plain reading of the original affidavit filed in lieu of examination in chief would show that the prayer is wrongly mentioned in the said affidavit and that the said mistake is an obvious typographical mistake, which had occurred due to inadvertence and that, therefore, the order impugned in the revision is sustainable and needs no interference.

8. I have bestowed my attention to the facts and I have given earnest consideration to the submissions.

9. The suit is admittedly filed for Specific Performance of the suit contract of sale. As already noted, in the original affidavit filed in lieu of examination in chief, a prayer in regard to the validity of a demand notice issued under A.P. Municipalities Act was stated. Obviously, it is a typographical mistake. In the facts and circumstances and going by the fact that such mistakes are not uncommon, the contention that the said mistake had occurred due to inadvertence is acceptable. Since the earlier affidavit filed had become part of the record, as rightly contended by learned counsel for the defendant, the plaintiff is not entitled to seek amendment of that affidavit. Therefore, the only course open to the plaintiff is to file an additional chief affidavit explaining the mistake in the original chief affidavit. An affidavit, which is a solemn statement, cannot be permitted to be amended, but, the mistakes in

such affidavit can be permitted to be explained and the correct facts may be permitted to be stated by according permission to file additional or supplemental affidavit, if the facts of the case warrant granting of such permission. Therefore, in the well considered view of this Court, the trial Court is justified in permitting the plaintiff to file an additional affidavit in lieu of additional examination in chief as sought for in the application and in allowing the said application.

10. Be that as it may, the learned counsel for the defendant had pointed out that in the additional chief affidavit, the plaintiff had made certain allegations in regard to the non-examination of the attestors and the scribe of the agreement and the necessity to examine the said witnesses also. Be it noted that the said allegations in the affidavit in regard to the necessity of examining the said witness are not germane for consideration in the present proceeding. Therefore, it is trite to observe that the trial Court would consider the said aspect and any other relevant aspects, if necessary, on merits, in case the plaintiff files any application/s for permission to examine or produces for examination on his side the said witnesses. Therefore, the dismissal of this revision by this Court shall not be taken as according permission to the plaintiff to examine the said witnesses.

11. Viewed thus, this Court finds that this revision is devoid of merit and that the order impugned does not warrant interference.

12. In the result, the Civil Revision Petition is dismissed.

No costs.

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

JUSTICE M. SEETHARAMA MURTI

22nd APRIL, 2016
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THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Date: 22.04.2016

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