

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

CIVIL REVISION PETITION NO.176 OF 2016

ORDER:

The petitioner herein is the defendant in O.S.No.310 of 2009. The petitioner filed I.A.No.792 of 2015 seeking amendment of the written statement under Order VI Rule 7 read with 151 of the Code of Civil Procedure (henceforth, for short referred to as 'C.P.C').

The sole respondent herein filed the suit for eviction from the suit schedule property and for recovery of arrears of rent and mesne profits. The suit was instituted in the year 2009. After a full-fledged trial, it was decreed on 05.09.2011. Then, the present petitioner herein carried the matter in appeal in A.S.No.365 of 2011. That appeal was allowed and the matter was remanded to the Trial Court for consideration afresh and disposal in accordance with law. On 13.03.2013, the suit was reopened and P.W.2 was cross-examined on 19.12.2013 for the evidence of the defendant. In lieu of the chief examination, the defendant filed his chief examination affidavit only on 04.03.2014. Instead of subjecting himself for a cross-examination, number of adjournments were sought for without allowing the cross-examination to take place. The petitioner herein filed I.A.No.591 of 2015 under Order VII Rule 11(d) of the C.P.C seeking rejection of the plaint. That application, upon contest, was dismissed by the Court on 12.08.2015. Subsequently thereto, the present interlocutory application I.A.No.792 of 2015 is moved for amendment of the written statement by seeking to introduce a plea that the suit is not maintainable and also is liable to be rejected in view of the principle enunciated under Order VII Rule 11 (d) of the C.P.C. An alternative plea was also sought to be introduced. In that, the plaintiff has not fulfilled the requirements of Section 106 of Transfer of Property Act.

Thus, the petitioner herein who is the defendant in the suit, has

made a belated attempt to introduce an altogether new case of defense.

It is, in this context, appropriate to notice that the suit is once before decreed, but however, it was remanded by the Appellate Court as long back as on 30.10.2012. Three years period has been consumed thereafter.

The Trial Court dismissed the interlocutory application following the principles on the subject quite carefully.

It will be appropriate to notice that the Supreme Court in ***Revajeetu Builders and Developers vs. Narayanaswamy and sons and others***^[1], after considering the whole gamut of the legal principles, has crystallized the factors to be taken into consideration while dealing with the applications for amendments in paragraphs 63 of its judgment. Principle No.5 would set out that, if the proposed amendment constitutionally or fundamentally changes the nature and character of the case, that principle and factor should be taken into account before ordering amendment. In the instant case, the amendment sought to be introduced by the petitioner herein would amount to fundamentally changing the very nature of the suit, in which he has offered his defense once before.

Therefore, it has to be viewed from this perspective and also from the perspective that the plaintiff has already completed his side of the evidence even after the suit is remanded in October, 2012. The bonafides in moving this application become suspect, inasmuch as, the very same petitioner has moved earlier an application I.A.No.591 of 2015 for rejecting the plaint which was dismissed on 12.08.2015 upon contest. What has been urged in that I.A, which stood rejected, is sought to be reintroduced now by seeking amendment of the pleadings. Though, Courts tend to adopt a very liberal approach in allowing the parties, to amend their pleadings essentially for purposes of minimizing the litigation time and also for purposes of securing an end to the possible litigation between the parties, by filing these kind of

applications, the petitioner gains profit as he would continue to be a tenant of the suit schedule premises. The plaintiff, in that process would be put to irreparable loss and it cannot be compensated in monetary terms. Hence, I do not see any justifiable reason to entertain this revision and it is accordingly dismissed.

I, hope and trust, that the suit being an old one, every endeavor be made to dispose it of before the onset of summer holidays, 2016.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE NOOTY RAMAMOHANA RAO

Date:04.03.2016
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[\[1\]](#) (2009) 10 Supreme Court Cases 84