

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION NO.1115 OF 2016

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ORDER:

This revision, under Section 115 CPC, is preferred against the order passed by the Court below in E.A. No.65 of 2015 in E.P. No.138 of 2009 in ARC No.19 of 1989 dated 24.11.2015.

E.A. No.65 of 2015 was filed by the respondent herein, under Order 6 Rule 17 read with Section 151 CPC and Rule 28 of Civil Rules of Practice, to permit the petitioner to amend column No.12 of the prayer in the EP to read, ***“after as per the terms of the judgment” as “failing which order of detention in the civil prison of the secretary of the judgment debtor society till honour of the decree and judgment and also issue attachment of an extent of 400 square yards out of the 2000 square yards land situated in Sy. No.298/1 and 2 at Madhurawada village in the name of the judgment debtor society or both under Order 21 Rule 32 read with Section 151 CPC to seek the accurate clear, and specific relief in the interest of justice and equity”.***

In the order under revision, the Court below observed that the petitioner had not added any new facts or set up any cause of action; as he was seeking to add the relief, which was not mentioned in the original petition, it would not cause loss or injustice to the revision petitioner by adding the relief; if the petitioner was not permitted, he had no scope to get the benefits under the decree passed which was a cause to file the execution petition; and if the petitioner was not permitted, his entire legal steps would turn illusory. The Court below allowed the application.

Sri G. Rama Gopal, Learned Counsel for the petitioner, would submit that Order 6 Rule 17 CPC has no application to execution proceedings; it applied only to pleadings during the pendency of the Suit, and not after a decree is passed; the order passed by the Court below denied the petitioner

herein their right to question the grant of such a relief beyond the period of limitation; and the relief of detention of the Secretary of the Society in Civil prison could not have been sought except with the leave of the Court.

Order 6 Rule 1 CPC defines pleadings to mean plaint or a written statement. Order 6 Rule 17 CPC permits amendment of the pleadings i.e., plaint and the written statement and, consequently, the said provision has no application to execution proceedings. Order XXI Rule 32(2) CPC stipulates that, where the party against whom a decree for specific performance or for an injunction has been passed is a Corporation, the decree may be enforced by the attachment of the property of the Corporation or, with the leave of the Court, by the detention in civil prison of the directors or other principal officers thereof, or by both attachment and detention. In so far as the respondents herein had sought detention of the Secretary of the Society in Civil Prison, such a relief only have been sought with the leave of the Court as Section 9 of the A.P. Co-operative Societies Act stipulates that a Society, on its registration, shall be a body corporate. Consequently, the Secretary of the Society would be an officer of a Corporation whose detention can only be sought with the leave of the Court. In so far as attachment of the property of the petitioner society is concerned, while Order 21 Rule 32(2) does not prohibit any such amendment being sought, the fact remains that the petitioner herein had contended that the said application was barred by limitation. The Court below has failed to examine this aspect.

While a mere reference to a wrong provision would not disable the Court below from amending the prayer in the application filed in execution proceedings, it was incumbent upon the court below to examine whether such an amendment could have been ordered if the application had been made beyond the prescribed period of limitation. To the extent the Court below permitted amendment of the prayer, to include detention of the Secretary of the Society in civil prison, the impugned order is set aside. The I.A. is restored to file. The Court below shall, while considering whether or not permit amendment of the relief sought for of attachment of the properties of the petitioner society, examine whether the said application is barred by limitation.

The Civil Revision Petition is disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, J

Date: 22.04.2016.
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