

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2623 OF 2016

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ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India, challenging the dismissal order dated 06.04.2016 passed in I.A. No.25 of 2016 in O.S. No.55 of 2013, on the file of Junior Civil Judge, Kothuru, Srikakulam District.

2. The petitioner filed written statement when the matter was posted for cross examination of PW.1, raising a plea that the respondent/plaintiff created the suit promissory note with the support of attestors and scribe, who are his followers but the petitioner failed to take up the grounds such as material alteration due to oversight and also having no certified copy of the suit promissory note. Hence, the petitioner was advised to file additional written statement raising such plea of material alteration and said receipt of additional written statement would not cause any prejudice to the respondent and prayed to receive the same.

3. The respondent/plaintiff filed counter contending that the petitioner/defendant already filed his written statement and at the stage of cross examination of PW.2, the additional written statement cannot be received and it is aimed to protract the matter for some more time and prayed for dismissal of the petition.

4. The trial court, after hearing argument of both the counsel, dismissed the interlocutory application filed under Rule 9 of Order VIII of Code of Civil Procedure (for short 'CPC'), declined to receive additional written statement.

5. The order is now challenged before this Court raising a specific ground that finding of the trial Court that the pleas raised

in the additional written statement and original written statement are inconsistent and that the order passed by the trial Court is not in consonance with Order VIII Rule 9 CPC and prayed to set aside the dismissal order dated 06.04.2016 and prayed to allow the revision while directing the trial Court to receive the additional written statement.

6. Sri B.M.Patro, learned counsel for the petitioner, at the stage of admission, contended that the petitioner is entitled to file additional written statement since the copy of the suit promissory note supplied to him did not disclose the material alteration. When a particular fact is not within the knowledge of the petitioner, the petitioner/defendant with the leave of the Court can file subsequent pleadings, by way of additional written statement and prayed to allow the revision petition.

7. The powers of this Court under Article 227 of the Constitution of India are limited and such powers can be exercised only when the subordinate Courts exceed its discretion and to keep the subordinate Courts within its limits and merely because, the order is erroneous the Court cannot exercise its power under Article 227 of the Constitution of India.

8. Admittedly, the petitioner/defendant filed written statement under Order VIII Rule 9 CPC raising a specific contention that the suit promissory note is not supported by consideration and it was concocted. Now, the petitioner suddenly raised a plea that there is material alteration of the promissory note i.e., alteration which effects materially the document, which voids the same. He filed petition under Section 151 CPC, seeking leave of the Court, to file additional written statement contending that in the written statement he raised a plea that the plaintiff/respondent concocted,

created the suit promissory note with the support of his attestors and scribe, who are his followers. But he failed to raise the ground such as material alteration due to oversight and having no certified copy of the promissory note. Except this ground, no other contention was urged before the trial Court.

9. Now, the question before me is when additional written statement by way of subsequent pleadings is permissible and the difference between Order VI Rule 17 i.e., amendment of pleadings and Order VIII Rule 9 CPC, which deals with subsequent pleadings is required to be considered to settle the issue before me.

10. Order VI Rule 17 CPC enables the parties to raise additional pleas by amending their pleadings since Courts cannot base its decision on grounds outside the pleadings. The object of rule is that the Courts should try on the merits of the case that comes before them and should consequently allow all amendments that may be necessary for determining the real question in controversy between the parties without causing injustice to the other side. The power of amendment is granted to the Court in the larger interests of doing full justice to the parties. Since the Courts exist for the purpose of doing justice between the parties and not for punishing them for their mistakes. The general rule is, therefore, that all amendments are to be allowed which do not amount to set up a new case and which would not cause injustice to the other side and which will be necessary for the purpose of determining the real question in controversy between the parties. While deciding the petitions under Order VI Rule 17 CPC, the Court has to exercise its discretion to put an end to the litigation, finally, permitting the parties to raise their pleas by way of amendment to their pleadings. However, amendment to CPC in

2002 by Act 22 of 2002 w.e.f. 01.07.2005 amendment cannot be allowed, as a matter of course in view of the proviso Order VI Rule 17 CPC but for allowing pre-trial amendments, there is no bar.

11. Whereas, Order VIII Rule 9 CPC, deals with the subsequent pleadings. No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off (or counter-claim) shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix time for presenting the same. This rule requires the leave of the Court before any party can present a further pleading after the written statement has been filed and a party who wants to file an additional written statement has to file a petition stating the reason why he failed to disclose these facts in the original written statement at that stage.

12. It is clear from Order VIII Rule 9 CPC that the parties cannot be permitted to file additional written statement without the leave of the Court. However, filing of such additional written statement or rejoinder to the pleadings would arise when the plaint is amended by the plaintiff or when the defendant set up a new plea in the written statement, then, the plaintiff is at liberty to file rejoinder to his pleadings i.e., subsequent pleadings, similarly in a case where during the pendency of the suit or proceedings if any party died and his legal representatives were brought on record amending the plaint suitably, claiming right by intestate succession or testamentary succession the defendant is entitled to file additional written statement as answer to the subsequent facts brought on record by way of amendment to the plaint. Where

the plaint is amended after filing of the written statement due to impleading the third party to the suit or the legal heirs or claiming any additional relief then the defendant can be permitted to file additional written statement confining to the amended portion of the plaint. The additional written statement should not set up a new case or set facts inconsistent with the original written statement, where the pleas new and inconsistent with the original written statement filed pursuant to amendment of the plaint were made and in such case a permission under Order VI Rule 17 to amend the pleadings is necessary. Therefore, it is clear that the filing of additional written statement would arise only in certain cases, not in the suit where the plaintiff can raise a plea in the original written statement. In the absence of any amendment of plaint, the question of filing additional written statement under Order VIII Rule 9 CPC does not arise. In the present set of circumstances, where the defendant contended that he could not raise plea of material alteration due to oversight and due to non-availability of certified copy of promissory note. The remedy open to him is only by filing petition under Order VI Rule 17 CPC and not by filing the petition under Order VIII Rule 9 CPC.

13. The learned counsel for the petitioner drawn the attention of this Court to a judgment of this Court reported in **Nannapaneni Sowbhagyamma v. Nannapaneni Rama Rao**^[1]. This Court discussed the scope of Order VI Rule 17 and Order VIII Rule 9 CPC and drawn distinction between these two, while holding that Order VI Rule 17 has no application so far as the subsequent pleading as provided under Order VIII Rule 9 CPC from its wording “the Court may at any time require any additional pleading to permit” and any additional pleading of a party after written

statement of defendant is only with leave of the Court. No doubt, amendment can be either to the plaint or written statement which are part of the pleadings. The amendment is different from additional or subsequent pleading. It is needless to say an amendment can be sought even by introduction of additional pleading but, amendment is not confined to additional pleading alone for the reason that the amendment may be by deletion of some portion in the pleading for substitution of any new pleading by deletion of the existing or by addition as the case may be. There is nothing to say from Order VI Rule 17 CPC., that is subject to or notwithstanding what is contained in Order VIII Rule 9 of CPC which is the subsequent provision to Order VI Rule 17 CPC in the same Code in arrangement of the orders. It is needless to say even if there is any inconsistency or irreconcilability between both the provisions, for one of which are running with the words subject to or notwithstanding; the Order VIII Rule 9 CPC insofar as the area of inconsistency will definitely prevail-vide **Dharangadhara Chemical Works v. Dharangadhara Municipality, (1985 (4) SCC 92).**

14. In the facts of the above judgment, two plaintiffs claimed that the husband of the 1st defendant executed a will bequeathing his properties described schedule and sought for declaratory relief. The defendants disputed the suit claim as well as the will allegedly executed by the husband of the 1st defendant and while contending that the 2nd defendant is adopted daughter of the 1st defendant and that the property was gifted in favour of the 1st defendant and the 1st defendant in turn gifted the property in favour of the 2nd defendant thereby the plaintiff is not entitled to relief of declaration or consequential reliefs. The plaintiffs sought

permission to file rejoinder disputing the contentions raised by the defendants and the Court granted leave to file rejoinder. In those circumstances, in para-10 of the judgment clearly held that rejoinder under Order VIII Rule 9 CPC is necessary to deny independent pleading raised by the defendants in their written statement which is not simply an answer to the plaint claim and upheld the order of the trial Court. The law declared in the above judgment is no way helpful to the revision petitioner.

15. The learned counsel for the petitioner also drawn the attention of this Court to a judgment in **C.A.Galia Kotwala & Co. (P) Ltd., Mumbai v. Sri Kailasanandha Cotton Syndicate (P) Ltd., Guntur (2015(6) ALD 399**, this Court discussed about the scope of Order VIII Rule 9 CPC and Order VI Rule 1 CPC **relying on earlier judgment in Gorantla Kondalarayudu v. M/s.Marvel Organics, represented by its Partners, Chirala (1997(5) ALT 663)** held that Order VIII Rule 9 CPC, a party shall not file any pleading subsequent to the filing of the written statement of the defendant either by way of a defence to set-off or counter-claim, except by the leave of the Court. Though Order VI Rule 1 CPC has not included rejoinder as a pleading, conventionally, the Courts invariably allow rejoinders to be filed as part of additional pleadings. Further in **Gorantla Kondalarayudu (supra)**, this Court held that “Order 8 Rule 9 of CP.C. should not be confused by reading together that it permits only additional written statement by way of pleadings. Because the expression used therein is ‘that no pleading’ subsequent to written statement shall be filed meaning thereby both plaint and written statement. Pleadings shall mean plaint and written statement as per Order 6 Rule 1 CPC. In that context, the pleadings and additional pleadings in Order 8 Rule 9

include the additional plaint also which can be either called as rejoinder or the reply in its real consequences". But this Court did not clarify as to when filing of additional written statement would arise in the said judgment. But in the latter judgment of **Nannapaneni Sowbhagyamma (supra)**, this Court distinguished the circumstances where the petition for amendment under Order 6 Rule 17 and Order 8 Rule 9 CPC are required to be filed by applying principles laid down in the above judgment and further clarifying that the subsequent filing of additional written statement would arise only when the plaint is amended either due to impleading third party or due to amendment of plaint arising any independent plea. But here the plaintiff did not amend his pleading so as to enable the defendant to file additional written statement. In such a case the remedy open to the petitioner is to file a petition under Order VI Rule 17 CPC, but not a petition under Order VIII Rule 9 CPC, to circumvent the provision of CPC and to overcome the interdict contained in the proviso to Order VI Rule 17 CPC, the petitioner invented a story that the petitioner by oversight and due to non-availability of the certified copy of the promissory note, he could not raise said plea and sought leave of the Court to file additional written statement. The parties shall not be allowed to circumvent the law to take advantage of their own fault. Therefore, the trial Court rightly dismissed the petition and I find no grounds to set aside the order under challenge in the revision petition since the trial Court had neither exceeded the jurisdiction conferred on it nor failed to exercising the jurisdiction they are conferred on it.

16. In the result, this Civil Revision Petition is dismissed. No costs.

17. Miscellaneous petitions, if any, pending in this revision

shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 01.07.2016

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