

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.5299 of 2011

ORDER:

This Civil Revision Petition by the unsuccessful respondent/revision petitioner under Article 227 of the Constitution of India is directed against the orders dated 14.10.2011 of the learned Rent Controller-cum-Principal Junior Civil Judge, Yellamanchili of Visakhapatnam District passed in I.A.No.338 of 2011 in RCC 3 of 2005 filed by the petitioner/ respondent herein under Order VI Rule 17 of the Code of Civil Procedure, 1908 (hereinafter, 'the Code') requesting to permit her to incorporate in the petition for eviction, by way of amendment, the proposed pleading as stated in the petition.

2. I have heard the submissions of the learned counsel for the revision petitioner and the learned counsel for the respondent. I have perused the material record.

3. The parties shall hereinafter be referred to as 'the revision petitioner/tenant' ('the tenant', for brevity) and 'the respondent/landlady', ('the landlady', for brevity) for convenience and clarity.

4. To begin with, it is necessary to refer to the pleadings of the parties.

4.1 The case of the landlady in support of her aforementioned request for amendment of the eviction petition, in brief, is this:

She had filed the above said RCC against the tenant for eviction on the grounds of wilful defaults in payments of rents and *bona fide* personal requirement. In the petition, it is mentioned that the lease had commenced in the year 1960. After filing her affidavit in lieu of examination-in-chief, on enquiries with her predecessor-in-title and on securing old documents, she came to know that her vendor leased out the Eastern ground floor building of

the said building to the father of the tenant-late Appa Rao on 06.11.1969 on a monthly rent of Rs.50/- and that the said Appa Rao had issued a legal notice and also made letter correspondence with her vendor in regard to repairs to the schedule property. To incorporate the said facts, it has become necessary to seek the amendment of the petition for eviction as follows: To delete the following part of the sentence, viz., "the petitioner's vendor leased out the Eastern Ground Floor portion of the said building to the respondent in the year 1960 for an amount of Rs.150/- per month" in paragraph III(1) at lines 5 to 7 and incorporate in its place the following sentences, viz., "the petitioner's vendor leased out the Eastern Ground Floor building of the petition schedule property to Late Bhesetti Appa Rao, who is the father of the respondents on dt.6.11.1969 and on the same day, he executed a Rent deed in favour of the petitioner's vendor with a stipulation of payment of rent of Rs.50/- on every month. The above Bhesetti Appa Rao issued a legal notice and also made letter correspondence with the petitioner's vendor about the repairs of the petition schedule property. After the death of the respondent's father, Bhesetti Appa Rao, the respondent continued to reside in the suit premises as tenant on the above terms and conditions orally". (Reproduced Verbatim). The above proposed amendment does not change the nature of the case and does not make out a new case. Therefore, the landlady may be permitted to amend the petition to meet the ends of justice.

5. The defence of the tenant, in brief, is as follows:

The proposed amendment sought for is highly irregular, illegal and unjust. The proposed amendment is contrary to the original version in the original petition. Hence, the landlady is seeking deletion of a part of her pleading. The amendment, if permitted, changes the nature of the case and introduces a new case. The amendment sought for after filing of the chief affidavit should not be allowed as the trial had commenced. She is

continuously avoiding to appear for her cross-examination before the Court for years together. The proposed amendment, which is totally a new plea, is invented. The proposed amendment causes prejudice as it goes to the root of the matter.

6. At the time of enquiry before the learned Rent Controller, no oral and documentary evidence was adduced on either side.

7. On merits, and by the order impugned, the Court below allowed the petition of the landlady. Therefore, the aggrieved tenant filed this revision petition.

8. At the hearing, the learned counsel for the parties reiterated the respective pleaded cases of the parties. The learned counsel for the tenant contended as follows: 'The amendment that was sought for after commencement of the trial, that is, after the filing of the chief affidavit of the landlady, shall not be permitted in view of the proviso to Order VI Rule 17 of the Code. By way of the proposed amendment, the petitioner is intending to introduce a new plea in the eviction petition. The proposed amendment changes the nature of the case and causes prejudice to the defence that was taken by the tenant. The order of the Court below is an un-reasoned and cryptic order and is unsustainable under facts and in law.' Per contra, the learned counsel for the landlady while reiterating her case and supporting the orders of the Court below had submitted as follows: 'Though the order is a short order, the order contains sufficient reasons. Even otherwise, when the conclusion is correct, the order can be sustained under facts and in law and need not be set aside merely on the ground of inadequacy of reasons. PW1 is not yet cross examined and hence, the amendment can be permitted. On coming to know about the facts about the commencement of lease between the vendor of the landlady and the father of the respondent in the year 1969 on a monthly rent of Rs.50/- and on securing the documentary evidence in that

regard, the amendment is being sought to state the true facts based on documentary evidence to state correctly the year of commencement of the lease and the original rent at the inception. By way of the proposed amendment, neither the relief sought nor the schedule is being changed. Therefore, the proposed amendment does not either introduce a new case or change the nature of the case. The Court below is correct in allowing the amendment.'

9. Since the facts, the proposed amendment and the contentions are already stated supra, there is no need to dilate on the said aspects.

10. In view of the contentions and rival contentions, it is profitable to refer to the proviso to Order VI Rule 17 of the Code, which reads as under:

“Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

Dealing first with the aspect that the amendment which is being sought at the stage of the cross-examination of PW1, that is, after the commencement of the trial cannot be permitted in view of the above said proviso, it is necessary to refer to the following decisions:

In *Usha Devi v. Rijwan Ahamd*¹ a contention was advanced that the trial of the suit would commence with the settlement of the issues; and, in support of the said contention that the framing of issues marked the commencement of the trial of the suit reliance was placed on the decision in *Ajendraprasadji N.Pandey v. Swami Keshavprakeshdasji* [(2006) 12 SCC1]. However, while meeting the said contention, the attention of the Supreme Court was invited to the decision of the Supreme Court in *Baldev Singh v. Manohar Singh* [(2006)6 SCC 498] wherein it was held as follows:

¹ (2008) 3 Supreme Court Cases 717

“Before we part with this order, we may also notice that proviso to Order 6 Rule 17 CPC provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced. For this reason, we have examined the records and found that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the suit. From the record, it also appears that the suit was not on the verge of conclusion as found by the High Court and the trial Court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted hereinbefore, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 CPC which confers wide power and unfettered discretion to the Court to allow an amendment of the written statement at any stage of the proceedings.

Further, the Supreme Court having referred to a three-judge Bench decision in *Sajjan Kumar v. Ram Kishan*², had held as follows:

“Having heard the learned Counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial Court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial Court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if Section 115 Code of Civil Procedure would not have been strictly applicable. It is true that the Plaintiff-Appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of the execution in the event of the plaintiff-appellant succeeding in the suit.”

Thus in *Usha Devi's* case (*Supra*), the Supreme Court, keeping in view the decision in *Sajjan Kumar* (*supra*), held as follows:

“We may clarify here that in this order we do not venture to make any pronouncement on the larger issue as to the stage that would mark the commencement of trial of a suit but we simply find that the appeal in hand is closer on facts to the decision in *Sajjan Kumar* and following that decision the prayer for amendment in the present appeal should also be allowed.”

² (2005) 13 SCC 89

In the case on hand also, the affidavit of PW1 is only filed and even according to the tenant, she did not submit yet for her cross-examination; therefore, the matter has not reached the stage of arguments. Therefore, in the well considered view of this Court, the facts of present case are akin to the facts of the cases in Usha Devi (1st supra) and Sajjan Kumar (2nd supra). Further, this Court is of the considered view that it would be a sound exercise of discretion to permit amendment of the petition, if it is permissible to do so, and that on the ground of mere delay the amendment sought for in a given case cannot be refused. In view of the ratios in the decisions of the Supreme Court and the aforesaid reasons, the decisions of this Court in Sri Venkata Ramana Arcade, Nellore v. Y.Vijaya Lakshammamma (died) per LRs and Others [2014 (1) ALD 281]; (ii) Muthukur Gram Panchayat, SPSR Nellore District v. K.Ramesh Reddy and others [2014(1) ALD 444]; and (iii) Narne Estates (P) Ltd., Secunderabad v. N.Gopal Naidu and others [2011(5) ALD 445] are not helpful to the case of the tenant/revision petitioner. Further, in view of the finding that the jurisdictional fact as envisaged in the proviso is found to exist and that therefore, it follows that the learned Rent Controller has jurisdiction to allow the amendment, the decision in Ajendraprasadji N.Pandey v. Swami Keshavprakeshdasji N and others [(2006) 12 Supreme Court Cases 1] is also not helpful to the case of the revision petitioner/tenant. The reasons for seeking amendment furnished in the affidavit of the landlady sufficiently show that the amendment is being sought on enquiries with the vendor and on securing documents in regard to the lease between the vendor of the landlady and the father of the tenant at the inception. The said averments make it manifest that there is no lack of due diligence on the part of the landlady. By way of the proposed amendment, the landlady is only clarifying the aspects in regard to the commencement of the lease between the vendor of the landlady and the father of the tenant; and, the term regarding rent at the inception of the lease; and also in regard to the property leased out without changing the

schedule and the reliefs claimed in the eviction petition. Though it is sought to be contended on behalf of the tenant that by way of the proposed amendment, the schedule of the petition is being sought to be changed, it is pertinent to note that the landlady is not seeking the amendment of the boundaries of the schedule; therefore, the contention of the landlady that the proposed amendment is only clarificatory in nature and based on subsequent information secured by her appears to be acceptable, *prima facie*. At this stage, it is trite to note that the law is well settled that when the Court is considering an application for amendment, this Court need not go into the merits of the contentions of the parties touching the averments in the proposed amendment and the Court has to only examine a *prima facie* case and find out as to whether sufficient case is made out for coming to a conclusion as to whether the proposed amendment should be permitted or not. By way of the proposed amendment, the landlady also intends to plead about the legal notice got issued by the tenant's father in regard to repairs of the property and the exchanged letters. Therefore, as rightly contended by the landlady, the proposed amendment does not either change the nature of the case or introduce a new case, in the considered view of this Court. Having regard to the facts of the case, this Court is of the opinion that allowing the amendment is necessary for the purpose of resolving the controversy between the parties once and for all and to give a quietus to the dispute and make the adjudication conclusive. Viewed thus, this Court finds that the trial Court is justified in allowing the petition and that the order of the trial Court does not warrant interference.

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

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this Civil Revision Petition shall stand closed.

14th July, 2016
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M.SEETHARAMA MURTI, J



