

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No. 2351 of 2010

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ORDER:

This Civil Revision Petition under Article 227 of the Constitution arises out of the order dated 04.03.2010 passed by the learned IX Additional Senior Civil Judge, Fast Track Court, City Civil Court, Hyderabad, in I.A.No.271 of 2009 in O.S.No.1005 of 1994. The petitioner is the plaintiff in the suit who filed the subject I.A. under Order VI Rule 17 CPC seeking to amend his plaint by adding certain lines relating to service of a notice under Section 89 of the Wakf Act, 1954 (Act of 1954) upon the Wakf Board, the second defendant. The trial court was however of the opinion that permitting such an amendment would result in the defendant foregoing a legitimate right to question the maintainability of the suit for want of the statutory notice under Section 89 of the Act of 1954 and would result in introduction of new facts. Aggrieved by the dismissal of the I.A., the petitioner/plaintiff filed this civil revision petition and by order dated 11.06.2010 this Court granted interim stay of further proceedings in the suit.

2. There was no representation for the respondents/ defendants when this matter was heard in part on 28.01.2016 and again, there is no representation today when the matter is taken up for hearing.

3. It is a settled proposition of law that the power vesting in the Court under Order VI Rule 17 CPC requires to be exercised judiciously. There can be no absolute embargo upon such exercise of discretion even in the context of the proviso introduced in the year 2002. If, in the interest of justice, the Court opines that a particular amendment should be permitted, it would be at liberty to order so. In the present case, all

that the petitioner/plaintiff wanted to introduce by way of the amendment was the fact that the statutory notice under Section 89 of the Act of 1954 had been duly addressed and received. The mere failure on the part of the petitioner/ plaintiff to initially mention the same in his plaint by oversight cannot bar the introduction of such fact at a later stage when it is borne out by the actual document. Disallowing the plea of the petitioner/plaintiff would invariably result in injustice as the petitioner's suit would be bound to fail in the absence of proof of service of the statutory notice though, in fact, such service was effected. The exercise of discretion by the trial court in the present case was therefore not in accordance with judicial norms and on this short ground, the order under Revision is set aside. The amendment is ordered. The trial court shall take steps in the matter accordingly.

The Civil Revision Petition is allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall also stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

February 4, 2016

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