

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3414 of 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed challenging the Order dt.16.03.2016 in I.A.No.3319 of 2015 in O.P.No.277 of 2010 on the file of I Additional Chief Judge, City Civil Court, Secunderabad, whereby the petition filed by the respondent herein/plaintiff under Order VI Rule 17 of Code of Civil Procedure Code (for brevity 'CPC') was allowed granting leave to amend the plaint, as claimed in the Petition.

2. The respondent herein filed O.P.No.277 of 2010 ( in forma pauperis) seeking recovery of Rs.57,19,75,000/- and later he found certain clerical or typographical errors in the plaint with regard to calculation and dates of registered correspondence between the parties and therefore to rectify those clerical or typographical mistakes, petitioner sought leave of the Court to amend the plaint in Pauper O.P.No.277 of 2010.

3. The respondent therein/revision petitioner filed Counter denying material allegations in the affidavit, *inter alia* contending that the petition filed under Order 6 Rule 17 of CPC is not maintainable and they intended the proposed

amendment only to improve the pleadings in the suit and alter the basis thereof. The proposed amendment of cause title as sought for by the petitioner is untenable. The amendment at para No.III 13, VIII (B) and (C) of the plaint, Valuation declared for the purpose of Court fee at paras (III) 15 and para-VII of the plaint and date in para No.4 of the plaint will not qualify as typographical error. Further, the plaintiff is trying to amend the plaint under the disguise of typographical error which is a dishonest effort to cure its gross negligence. Similarly, the 'date' of transaction cannot be permitted to change in the plaint as it could not within the ambit of pleadings under Order VI Rule 1 of CPC and also raised other contentions including maintainability of the application at the stage of the enquiry under Order XXXIII Rule 6 of CPC while praying for dismissal of the application.

4. The trial Court, upon hearing both the counsel, granted leave to amend the plaint, assigning its own reasons, relying on a judgment of Apex Court reported in M/ S. Revajeetu Builders & Developers V. M/ S. Narayanaswamy & Sons & Ors (2009 (10) SCC 84) and other judgments.

5. Aggrieved by the Order of the trial Court, the present Civil Revision Petition is filed by the respondent

therein/revision petitioner reiterating the grounds urged before the trial Court in the Counter and mainly contended that the respondent herein failed to obtain permission from the Court to present the plaint by its agent, as required under Order XXXIII Rule 3 of CPC, and that the proposed amendment would alter the basic structure of the suit; it is only with an intention to improve the plaintiff's pleading; that the proposed amendment would take away the valuable right accrued to the revision petitioner and prayed to allow the Revision Petition by setting aside the Order passed by the trial Court while dismissing I.A.No.3319 of 2015 in O.P.No.227 of 2010.

6. During hearing, Sri S. Ravi, Senior Counsel on behalf of Sri Shireen Sethna Baria, appearing for the revision petitioner, mainly contended that the Order of the trial Court is premature and at this stage, the proposed amendment cannot be permitted and apart from that the respondent herein did not obtain leave of the Court to present the plaint through an agent seeking to sue as in forma pauperis and unless the error in presenting the plaint is not rectified, at this stage, the proposed amendment cannot be allowed. He also further contended that the errors pointed out in the petition are neither clerical nor typographical errors and the plaint cannot be permitted to be amended and he placed reliance on a judgment of Apex

Court reported in J. Samuel and others v. Gattu Mahesh and others<sup>1</sup>, wherein the Apex Court elaborated the word Typographical mistake while considering an application filed under Order 6 Rule 17 of CPC to grant leave to amend the pleadings or not. On the strength of the principle laid down in J. Samuel's case, the errors to be amended by the proposed amendment cannot be construed as typographical mistake and the respondent herein cannot be permitted to carry out such amendment since it would alter the nature of the suit and prayed to set aside the Order under challenge.

7. Whereas, Sri S. Niranjan Reddy appearing on behalf of Sri Rusheek Reddy K.V, the learned counsel for respondent, supported the Order in all respects while contending that the scope of enquiry in a petition filed under Order VI Rule 17 of CPC is limited and the very presentation of the suit as *in forma pau peris* under Order XXXIII Rule 3 of the CPC cannot be decided in the present enquiry and that the proposed amendment would not change or alter the nature of the suit and, on the other hand, the claim is reduced to three crores in the claim approximately and that it would not take away the valuable right that accrued to the revision petitioner or admission made in the pleadings. On the other hand, those mistakes in referring the dates in registered correspondence is only typographical error and

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<sup>1</sup> (2012) 2 SCC 300

furnishing of better details or particulars for appreciation of facts by the Court. He further contended that there is no bar to entertain an application under Order VI Rule 17 of CPC even during pendency of enquiry of in pauper OP under Order XXXIII Rule 6 of CPC and prayed to dismiss the revision petition. Learned counsel for revision petitioner/defendant drawn the attention of this Court to a judgment reported in *Revajeetu Builders and Developers v Narayanaswamy and sons and others*<sup>2</sup>, wherein the Apex Court laid down certain guidelines to consider an application filed under Order 6 Rule 17 of CPC to grant leave to amend the pleadings.

8. Considering rival contentions and perusing the material available on record, including the Order under challenge, the point that arise for consideration is :

*“ Whether the proposed amendment would alter or change the nature of the claim, takes away the valuable right that accrued to the revision petitioner or any admission made in the pleadings or causes any prejudice to the revision petitioner, if the present petition is allowed, if so, whether leave granted by the trial Court be set aside ?*

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<sup>2</sup> (2009) 10 SCC 84

9. IN RE POINT: Undisputedly, the respondent herein filed suit for recovery of Rs.57,19,75,000/- as *in forma pauperies* under Order XXXIII of CPC in the year 2015 and the enquiry to grant leave to the petitioner/ respondent herein to sue as *in forma pauperies* is still going on even after a year. The plaint presented before I Additional Chief Judge, City Civil Court, Secunderabad, though it is under Order XXXIII of CPC seeking leave of the Court to sue *in forma pauperies*, for practical purposes, it is a suit, in view of Section 13 of Limitation Act. Therefore, the petitioner presented the plaint before the trial Court is pleading within the meaning of Order VI Rule 1 of CPC, such plaint can be amended and leave can be granted to amend the plaint, subject to satisfying the requirement for consideration of applications filed under Order VI Rule 17 of CPC, i.e., the proposed amendment shall not change the nature of the suit; the proposed amendment shall not take away the valuable right that accrued to the respondent therein and admission, if any, made by the plaintiff and it should not cause any prejudice, which cannot be compensated in terms of money, and that the proposed amendment would be a fresh suit if barred by limitation on the same cause of action, the amendment cannot be allowed.

11. The proposed amendment is as follows:

a. At page No.1, description of the suit: the amount of Rs.57,19,75,000/- mentioned in description of the suit is to be changed to Rs.54,19,75,000/-.

b. The table at page No.3, Para III (4) may be replaced by the following table:

| DATE     | CHEQUE NO | TRANSCATION DATE | BANIK | AMOUNT    |
|----------|-----------|------------------|-------|-----------|
| 29.01.08 | 099726    | 31.01.08         | HDFC  | 60000000  |
| 29.01.08 | 099727    | 31.01.08         | HDFC  | 60000000  |
| 29.01.08 | 099728    | 31.01.08         | HDFC  | 60000000  |
| 27.02.08 | 099729    | 28.02.08         | HDFC  | 54000000  |
| 27.02.08 | 099730    | 28.02.08         | HDFC  | 56000000  |
| 27.02.08 | 099731    | 28.02.08         | HDFC  | 40000000  |
| 08.05.08 | 099733    | 09.05.08         | HDFC  | 20000000  |
| 24.5.08  | 099734    | 26.05.08         | HDFC  | 50000000  |
|          |           |                  |       | 400000000 |

c. At page No.3, para (III) 7, Line NO.2: the words 'notice dated 04.08.2009' is to be changed to 'notice dated 05.08.09'.

d. At page No.4, para (III) 7 ( continuation), line NO.7: the Words 'notice dated 04.08.2009' is to be changed to 'notice dated 05.08.09'.

e. At page No.5, para (III) 13, line No.11: the total amount claimed is to be changed from 'Rs.57,19,75,000/-' to Rs.54,19,75,000/-.

f. At page No.6, para (III) 15, line No.1: the valuation of the suit is to be changed from 'Rs.57,19,75,000/-' to Rs.54,19,75,000/-.

g. At page No.6, para (III) 15, line No.2 and Line No.9: the Court fee payable is to be changed from 'Rs.57,22,2226/-' to 'Rs.54,22,176/.

i. At page No.7, para V, Line NO.10, the words 'on 04.08.2009' is to be changed to 'on 05.08.2009'.

J. At page No.7, para VI, Line NO.8, the words 'legal notice dt. 04.08.2009' is to be changed to 'Legal Notice dt. 05.08.2009'.

k. At page No.8, para VII, line No.1, the valuation of the suit is to be changed from 'Rs.54,19,75,000/-.

l. At page No.8, para VII, line No.3, the Court Fee payable is to be changed from 'Rs.57,22,226/-' to 'Rs.54,22,176/-'.

m. At page No.8, para VII (B), the amount of Rs.57,19,75,000/-' is to be changed to 'Rs.54,19,75,000/-'.

n. At page No.8, Para VIII ©, the amount of 'Rs.57,19,75,000/-' is to be changed to 'Rs.54,19,75,000/-'.

O. To amend the name of the defendant in the cause title of the plaint from :

M/s Satyam Computer Services Limited,  
Mayfair Trade Centre, S.P.Road, Secunderabad.  
To  
M/s Satyam Computer Services Limited,  
Now merged into  
M/s Tech Mahindra Limited,  
Vide Orders dt. 11.06.2013 passed by the Hon'ble  
High Court of Andhra Pradesh in CP No.123 of 2012 having its  
registered office at,  
Gateway Building, Apollo Bundler, Mumbai-400001.  
Rep by its Authorized Signatory".

12. The reason for seeking leave of the Court to amend the plaint is a mere clerical or typographical error, which were crept in the plaint, which requires to be rectified for appreciation of facts and in page 3 paras 3 and 4 are only furnishing better particulars. None of the proposed amendments would change the nature of the suit and would not take away the valuable right, if any, that accrued to the respondent/revision petitioner since the revision petitioner had not filed his written Statement before the trial Court and he will have an opportunity to meet the allegations, if any made. On the other hand, the proposed amendment in the claim is reduced to an extent of approximately three crores. The reduction of claim would not cause any

prejudice to the respondent, if any decree is passed fixing liability on respondent. The other amendments regarding change in the date in para 3, para (III) 7, line No.2, Notice date was mentioned as 4.08.2009 instead of '5.08.2009'. Similarly, at page No.4 para (III) 7, line No.7, Notice date was mentioned 4.08.2009 instead of 05.08.2009 and it is only typographical mistake. Further, at page No.5 at para III (13) and at page 6 para III (15), the claim amount is wrongly mentioned as Rs.57,19,75,000/- instead of Rs.54,19,75,000/- and at page 8 para 7 as well as page 8 para 8 (b) and (c), the figures Rs.57,19,75,000/- wrongly mentioned instead of Rs.54,19,75,000/-.

13. Learned counsel for revision petitioner/defendant contended that those mistakes cannot be construed as typographical errors, placing reliance on a judgment of Apex Court reported in J. Samuel's case referred to supra, wherein the Apex Court held that the term Typographical error is defined as a mistake made in the printed/typed material during printing/typing process. The term includes errors due to mechanical failure or slips of the hand or finger, but usually excludes errors of ignorance. Therefore, the act of neglecting to perform an action which one has an obligation to do cannot be called as a typographical error.

14. Similarly, in the same judgment, the Apex Court while dealing with an application under Order 6 Rule 17 of CPC held that the petitioner is able to establish that despite exercising due diligence, the mistakes could not have avoided and held that due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Due diligent efforts are requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term `Due diligence' is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial. A party requesting a relief stemming out of a claim is required to exercise due diligence and is a requirement which cannot be dispensed with.

15. In the present facts and circumstances of the case, the suit was filed about 5 years ago, but those mistakes were noticed only during enquiry to grant leave to sue as *in forma pauperies* and the mistake in mentioning the date of legal correspondence is purely typographical mistake since the date is typed as '4' instead of '5' in various paras, referred to supra. Therefore, the mistake is only a

typographical mistake, as defined by the Apex Court in Samuel's case.

16. The other proposed amendments to reduce the claim of the plaintiff and it is only due to mistake in calculation, that can be constructed as clerical mistake. Even otherwise, such reduction of the claim would not take away the valuable right that accrued to the revision petitioner. On the other hand, it reduces the obligation of the revision petitioner, if any decree is passed against him. Therefore, the proposed amendment of the plaint would not change the nature of the suit and it would not take away the valuable right that accrued to the respondent therein or admission, if any, made in the pleadings. On the other hand, it reduces the liability of the respondent therein incase the amendment is allowed and other amendment is only furnishing of better particulars. Therefore, such amendments can be allowed, subject to proof of exercise of due diligence, as held in Samuel's case, referred to supra.

17. In the present case, the cause shown by the petitioner/respondent herein is that while the employees of the petitioner were recently reviewing the various cases filed by the petitioner, it was realized that there are certain inadvertent errors/typographical mistakes which have crept in during the drafting of the plaint. The said errors/mistakes

came to the knowledge of the petitioner/plaintiff only when subsequent review of the case was being done by its employees for the purpose of collecting necessary evidence to be led in the matter.

18. Recently while reviewing the various cases, it was realized that there are certain inadvertent errors i.e., typographical or clerical were crept in the plaint. As on today, the petition is not registered as suit, since, the pauper enquiry under Order XXXIII Rule 6 of CPC is going on before the trial Court and finding such mistakes or errors in the plaint while reviewing various suits, it can safely concluded that the revision petitioner could exercise due diligence to amend the plaint. Therefore, in view of the principle laid down in Samuel's case, the proposed amendments can be allowed at the present stage i.e., almost a pre-registration stage of the plaint. Even otherwise, the Apex Court in Revajeetu Builder's case, referred to above, and in Ramesh Kumar v Rajmala Exports Private Limited and others<sup>3</sup>, the guidelines laid down in Revajeetu Builder's case were reiterated and held as follows:

*" On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment :*

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<sup>3</sup> 2012 (4) ALT 1 (SC)

*(1) Whether the amendment sought is imperative for proper and effective adjudication of the case ;*

*(2) Whether the application for amendment is bona fide or mala fide;*

*(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*

*(4) refusing amendment would in fact lead to injustice or lead to multiple litigation ;*

*(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*

*(6) as a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are illustrative and not exhaustive”.*

19. From the law declared by Apex Court, it is clear that while deciding the application for amendment ordinarily the Court must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide and dishonest amendments. The purpose and object of Order VI Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right under all circumstances, but the Courts while deciding such prayers should not adopt a hyper-technical approach. Liberal approach should be the general rule particularly, in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.”

20. The Apex Court further held that amendment application be filed immediately after filing suit i.e., before commencement of trial. If the petitioners are able to prove or explain as to how they failed to take steps before the trial is commenced despite exercising due diligence, the Court can allow such amendment. The factum of exercising due diligence depends upon circumstances.

21. Thus, the petition at pre-trial stage and at this stage, proposed amendment can be allowed, but post trial, proposed amendment cannot be permitted except where the Petitioner is able to show that despite exercising due diligence, steps could not been taken to amend the plaint.

22. In *Abdul Rehman and another v. Mohd. Ruldu and others*<sup>4</sup>, the Apex Court had an occasion to deal with the situation while deciding a petition under Order VI Rule 17 of CPC and held that if the proposed amendment to include relief of declaration of title, in addition to permanent injunction, was to protect their interest and not to change basic nature of suit as alleged. All amendments which were necessary for purpose of determining real questions in controversy between parties should be allowed if it did not change basic nature of suit. Change in nature of relief

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<sup>4</sup> (2012) 11 SCC 341

claimed should not be considered as change in nature of suit and power of amendment should be exercised in larger interest of doing full and complete justice between parties.. It is further held that amendment petitions shall be allowed if granting of an amendment really sub-serves ultimate cause of justice and avoids further litigation.

23. A similar view is expressed by the Apex Court in *Alkapuri Cooperative Housing Society Limited v. Jayantibhai Naginbhai (deceased) through L.Rs*<sup>5</sup>, wherein the Apex Court held that when amendment of plaint sought to have effect of altering basic structure of the suit, such amendment is impermissible. But, in the present case, the claim of the plaintiff is reduced to an extent of three crores approximately and it would not change or alter the nature of the suit even to deny amendment by applying the principle laid down in *Alkapuri's* case.

24. On overall consideration of the material on record, it is evident that the proposed amendment would no way affect the rights of the respondent/revision petitioner at this stage and the revision petitioner can certainly defend himself filing Written Statement after registering the OP as suit and such amendment, on the other hand, reduces the claim of the respondent in the plaint, in case any decree is passed

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<sup>5</sup> AIR 2009 SC 1948

against him, and the respondent therein would furnish better particulars, which are helpful to adjudicate the lis between the parties effectively. Therefore, I find no illegality in the order passed by the trial Court in granting leave to amend the plaint.

25. One of the major contentions raised before this Court is that at the stage of Order XXXIII Rule 6 of CPC, amendment cannot be allowed, but such question cannot be examined, while deciding a petition under Order VI Rule 17 of CPC since its scope is limited to grant leave or not and presentation of the plaint by a proper person cannot be decided. However, it is open to the revision petitioner to move appropriate application before I Additional Chief Judge, City Civil Court, Secunderabad, if he intends to challenge the very presentation of the plaint by an agent of the petitioner/plaintiff before the trial Court. Hence, this Court need not examine maintainability of the petition filed under Order XXXIII of CPC at the stage of enquiry in a petition filed under Order XXXIII Rule 17 of CPC. But, the trial Court did not accept the contention of the revision petitioner about the maintainability of presentation of OP itself through an authorized agent without leave of the Court. Therefore, the finding recorded by the trial Court at page Nos. 13 and 14 of the Original Order regarding presentation by proper person before the trial Court is

hereby set aside. However, in a separate application, if, filed by the revision petitioner, the trial Court is directed to decide the maintainability of the presentation of the plaint by an authorized agent, without leave of the Court in accordance with law at appropriate stage.

26. In view of my foregoing discussion, I find no grounds to interfere with the findings of the trial Court while exercising power of superintendence under Article 227 of the Constitution of India since the trial Court did commit no error and on the other hand, it is based on the settled legal principles. Accordingly, the Point is answered in favour of the respondent herein/plaintiff and against the revision petitioner/defendant.

27. In the result, this Civil Revision Petition is dismissed, but without costs in the circumstances of the case.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

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M. SATYANARAYANA MURTHY, J

Date: 14-09-2016.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



CRP No.3414 of 2016

Dt. 14-09-2016

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