

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.1687 of 2016

ORDER:

This Civil Revision Petition, filed under Article 227 of the Constitution of India, assails the order, dated 04-03-2016 passed by the Court of the Junior Civil Judge, Rayadurg, Ananthapur District in I.A.No.742 of 2015 in O.S.No.10 of 2008.

Heard Sri I. Venkata Prasad, learned counsel for the petitioner and Sri C. Srinivas, learned counsel for the respondent.

The plaintiff/respondent herein instituted O.S.No.10 of 2008 for permanent injunction. Resisting the said suit the defendant/petitioner herein filed written statement. In the said suit the petitioner/defendant filed I.A.No.742 of 2015 under the provisions of Order 6 Rule 17 of the Code of Civil Procedure praying for amendment of the written statement by permitting to insert paragraph No.9-A after paragraph No.9 of the written statement. Opposing the said application the plaintiff/respondent herein filed a counter. Learned Junior Civil Judge, Rayadurg by way of an order, dated 04-03-2016 dismissed the said application. This revision calls in question the said order passed by the learned Junior Civil Judge.

It is contended by learned counsel for the petitioner/defendant that the order impugned is erroneous, contrary to law and opposed to the very spirit and object of the provisions of Order 6 Rule 17 of the Code of Civil Procedure. It is the further submission of learned counsel that had the affidavit filed in support of the application been considered from proper perspective, the

order under challenge would not have emanated. It is further contended that the reasons assigned by the learned Judge are neither sustainable nor tenable in the eye of law nor the same are in consonance with the provisions of Order 6 Rule 17 of the Code of Civil Procedure. It is further submitted that the proposed amendment would not cause any prejudice to the respondent/plaintiff nor does it amount to introducing new case.

On the contrary, it is contended by learned counsel for the plaintiff/respondent herein that there is absolutely no error in the questioned order nor the order suffers from any perversity, as such, the order impugned is not amenable for any judicial review under Article 227 of the Constitution of India.

In the above backdrop, now the issue that falls for consideration of this Court is:

Whether the order under challenge is sustainable and tenable and whether the same is in consonance with the provisions of Order 6 Rule 17 of the Code of Civil Procedure?

The information available before this Court manifestly discloses that when the suit was coming up for cross-examination of the defendant, the petitioner/defendant filed the present application in the month of November, 2015. There is absolutely no dispute with regard to the reality that the trial in the suit commenced on 28-11-2011 and the present suit is of the year 2008.

According to the proviso under Order 6 Rule 17 of the Code of Civil Procedure no application for amendments shall be made 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.

The learned Junior Civil Judge in the penultimate paragraph of the impugned order recorded categorical finding that absolutely there is no mention about the reasons for delay in filing the petition or the reasons for which the petitioner could not file the petition immediately after the written statement and before commencement of trial and nothing prevented the petitioner from filing the petition earlier. Eventually, the Court below came to a conclusion that the petitioner was not diligent in prosecuting his case and learned Judge also held categorically that the petitioner failed to assail any reasons to say that despite due diligence he could not file the petition for amendment before commencement of trial. The said reasons assigned by the learned Junior Civil Judge, in the considered opinion of this Court by any stretch of imagination cannot be faulted nor can be disapproved in the facts and circumstances of the case.

It is settled and well-established proposition of law that unless the order impugned suffers from patent perversity the jurisdiction of this Court under Article 227 of the Constitution of India cannot be invoked.

For the aforesaid reasons, the Civil Revision Petition is dismissed. There shall be no order as to costs.

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

A.V. SETHA SAI, J

June 24, 2016

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THE HON'BLE SRI JUSTICE A.V. SESA SAI

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