

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5050 of 2013

ORDER:

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This Civil Revision Petition under Article 227 of the Constitution of India by the legal representatives of the deceased/sole plaintiff is directed against the orders dated 22.10.2013 of the learned Special Judge-cum-X Additional District Judge, Rajahmundry passed in OS.no.108 of 2011.

2. I have heard *Sri Ch.Dhananjaya*, learned senior counsel appearing for the revision petitioners/proposed plaintiffs 2 to 6 ('the revision petitioners', for brevity) and *Sri G. Krishna Murthy*, learned senior counsel appearing for the respondents 12 to 15. I have perused the material record.

3. The facts which are necessary to be stated as a prelude, in brief, are as follows:

In a suit that was brought by the sole plaintiff, on his death, his legal heirs/representatives had filed an application in IA.no.771 of 2012 for their impleadment as plaintiffs 2 to 6. On merits, the trial Court had allowed the said application by its orders dated 12.07.2013; and, the suit is coming for carrying out amendment in the cause title of the plaint in regard to addition of the plaintiffs 2 to 6, who are permitted to come on record as legal representatives of the deceased sole plaintiff. While so, on the failure of the plaintiffs to carry out the necessary amendments in the cause titles (Short and Full) of the plaint, the order impugned in this revision has come to be passed by the trial Court. The said order reads as under: '**In view of joining of staff members on 21.10.2013 who had participated in the Samaikya Andhra strike from 19.08.2013, this matter was tentatively adjourned as per respective notices as follows, 19.09.2013, 23.09.2013, 07.10.2013 & 22.10.2013 and taken today. Amendment is not carried out within stipulated period of 14 days from the date of allow IA.no.771 of 2012 on 12.07.2013. hence, IA.no.771 of 2012 is dismissed. For arguments of**

plaintiff on 01.11.2013.” [reproduced verbatim].

4. The revision petitioners, who are aggrieved of the said orders having filed this present revision petition urged in the grounds as follows: “The learned Judge, is pleased to allow the application in IA.no.771 of 2012. However, the learned Judge having permitted the proposed parties to come on record as plaintiffs 2 to 6 had over ruled his own orders. Once the LR application is allowed, the Court became *functus officio*. The Court below had failed to see that at the relevant time, the advocates were on strike and hence, the non compliance in regard to the carrying out of the amendment of cause titles to the plaint, which is a procedural aspect, had occasioned. Therefore, the same cannot be a ground for dismissing the LR application, by setting aside the earlier orders of the Court below by which the said application was allowed. The Court below had chosen to adjourn the matter on several occasions that is beyond the time of 14 days allowed under law for carrying out the amendment to the plaint. The dismissal of the LR application for non compliance of a procedural formality causes great prejudice to the proposed plaintiffs 2 to 6. The Court below had failed to see that all the defendants had remained *ex parte*. The Court below ought to have seen that the plaintiffs had already filed an application in IASR.no.1913 of 2013 dated 28.11.2013 to set aside the order, which is impugned in this revision and to receive the neat copy of the plaint.’

5. At the hearing, the learned senior counsel for the revision petitioners while reiterating the grounds urged in the revision petition would contend as follows: “Once the LR application is allowed the Court below ought not to have recalled its own order where by the application is already allowed. On allowing of the application to bring on record, the LRs of the deceased sole plaintiff, the act of carrying out of the amendments to cause titles to the plaint is only a ministerial act to be performed by the Staff of the Court, who are enjoined with the duty in that regard. The amendment that is to be carried out on allowing an application for bringing on record the legal representatives of the deceased plaintiff cannot be connected to an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (‘the Code’, for short); and,

hence, the question of the application of Order VI Rule 18 of the Code to the facts of the present case does not arise for consideration. Once the revision petitioners are allowed to be brought on record, the cause title is required to be amended by the Office of the Court concerned. That said function is a ministerial function, which the Court's establishment was charged to perform; and if the said duty is not performed or neglected, the fault would not lie on the revision petitioners." In support of the said contentions, he called in aid the following three decisions: (1) **Kariyappa v. Patel Rudrappa**^[1]; (2) **Rukmini Dattatraya Naik v. Parmanand Lalchand Joshi**^[2]; and (3) **Kantaben Babulal Borad v. Gujarat State Road Transport Corporation**^[3].

6. On the other hand, the learned senior counsel appearing for the contesting respondents would submit that the revision petition is not maintainable. In support of the said contention, the further submissions, which are advanced, in brief, are as follows: - 'This revision petition is filed assailing the order dated 22.10.2013. The revision petitioners admittedly filed IASR 1913 of 2013 on 28.11.2013 under Section 151 of the Code read with Order IX Rule 9 of the Code requesting to receive the neat copy of the amended plaint in the suit after setting aside the order dated 22.10.2013, which is impugned in the revision petition. The said application is still pending for consideration before the trial Court. In view of the said application filed by the present revision petitioners before the trial Court, the revision petition is not maintainable. The revision petitioners are not entitled to pursue two parallel remedies. When such an application is pending before the Court below and the Court below is ceased of the matter, this Court cannot go into the question involved in this /is while exercising the jurisdiction under Article 227 of the Constitution of India and that, therefore, the revision petition is not maintainable.' He would further submit that according to the revision petitioners as the advocates are on strike, the neat copy of the plaint could not have been filed; the said contention is untenable as the neat copy of plaint could have been filed in the Office of the Court; and,

there is no need to wait for the advocates to call off the strike for filing a neat copy of the plaint.

7. I have bestowed my attention to the facts and I have given detailed and thoughtful consideration to the submissions. The undisputed fact is that on the death of the sole plaintiff, the revision petitioners, who are his legal representatives, filed IA.no.771 of 2012 requesting for their impleadment as plaintiffs 2 to 6 and that the trial Court by the orders dated 12.07.2013 had allowed that application and permitted the revision petitioners to come on record as plaintiffs 2 to 6. The amendment of the cause titles to the plaint was not carried out. At that relevant time, the advocates were on strike on account of Samaikya Andhra movement. For whatever reasons, the amendment of the cause title to the plaint was not carried out within a reasonable time much less within 14 days time. The Court below was of the view that in view of the provision of Order VI Rule 18 of the Code, the amendment ought to have been carried out within 14 days and that for non compliance of that requirement, the revision petitioners are precluded from carrying out the amendment to the plaint. Taking such a view, the trial Court had recalled its earlier order dated 12.07.2013 in IA.no.771 of 2012 and dismissed the said application, which already stood allowed. The first question, therefore, to be considered is as to whether Order VI Rule 18 of the Code is applicable to the facts of the present case. To be very fair, the learned senior counsel appearing for the contesting respondents did not advance any arguments on this aspect. As already noted, his arguments are two fold. I have gone through the precedents cited by the learned senior counsel for the revision petitioners. Having gone through the precedents cited (1st, 2nd, and 3rd supra), this Court is in agreement with the view that when an order is made under Order XXII Rule 3 or 4 of the Code, the said order is to be given effect to, by recording the names in the cause title of the pleadings and that it might be done either by the party, who obtained the order, or by the Office of the Court and that such change in the cause title to be made, in the well considered view of this Court, cannot be considered as an amendment of the plaint within the meaning of Order VI Rule 17 of the Code since the

substitution of legal representatives of a deceased party is made to give effect to the order under Order XXII Rule 3 or 4 of the Code; and hence, Order VI Rule 18 of the Code or for that matter Order VI Rule 17 of the Code has no application to such situation. Therefore, this Court can come to a safe conclusion that the amendment of cause title should have been done within 14 days as held in the orders of the Court below is not correct. In ***Sital Prasad Saxena (D) by L.Rs. v. Union of India and Ors.*** (1985) 1 SCC 163, it was observed that the rules of procedure Under Order XXII Code of Civil Procedure are designed to advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties.

8. Taking up now the next set of contentions of the learned senior counsel for the respondents, it is to be noted that the filing of the amended neat copy of the plaint would arise only after the amendment is carried out. Therefore, the non filing of the amended copy of the plaint during the strike period in the office of the Court does not affect the rights of the revision petitioners whose application is already allowed permitting them to come on record as plaintiffs 2 to 6, they being admittedly the LRs of the deceased sole plaintiff. Be that as it may. Dealing next with the contention in regard to the maintainability of the revision petition on the ground that an application in IASR.no.1913 of 2013 is pending before the trial Court for the self same or identical relief, it is to be noted that it is noticeable from the material record that by the time this revision petition was filed the said application was only at the SR stage and is not registered. Though the learned senior counsel appearing for the contesting respondents had stated that the said application is registered, he is not in a position to furnish the number of the said IA at present. Therefore, there is no clear information before this Court as on today as to whether the said application is registered or not. If that application is not registered, the respondents cannot be heard to say that a parallel proceeding is pending before the trial Court. Proceeding on the assumption that the said application is registered, now it is to be examined as to whether such a proceeding can be considered as a parallel proceeding and whether such proceeding precludes the revision petitioners from prosecuting this revision. Keeping in

view that the present revision is filed under Article 227 of the Constitution of India whereunder this Court is having supervisory jurisdiction it is necessary to refer to the relevant precedential guidance in **Surya Dev Rai v/s. Ram**

Chander Rai and others^[4] which is as follows:

(1) Amendment by Act No. 46 of 1999 with effect from 01.07.2002 in Section 115 of Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2).....

(3) ...

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions issought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the at, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the

case.

Be it noted for reference that the decision above is partly over ruled in **Radhey Shyam and others v/s. Chhabi Nath and others**^[5]. In this decision, while answering the question – ‘whether the view taken in **Surya Dev Rai** that a writ lies Under Article 226 of the Constitution against the order of the civil court, which has been doubted in the reference order, is the correct view?, it is held as follows:

Accordingly, we answer the question referred as follows:

(i) Judicial orders of civil court are not amenable to writ jurisdiction Under Article 226 of the Constitution;

(ii) Jurisdiction Under Article 227 is distinct from jurisdiction from jurisdiction Under Article 226.

Contrary view in Surya Dev Rai is overruled.

In the well considered view of this Court, when the order impugned is passed by the Court below committing a jurisdictional error by holding that the amendment of the cause titles has to be carried out within 14 days time by applying a provision of law which is inapplicable and that by the order impugned, which was passed by adopting a too technical/pedantic approach, when grave injustice or failure of justice had occasioned, this Court is of the earnest view that such an order cannot be allowed to be sustained and that such order deserves to be set aside in a proceeding under Article 227 of the Constitution of India. Hence, this Court finds that the application filed before the trial Court under Section 151 of the Code, even if it is numbered, does not preclude the revision petitioners from prosecuting the revision. Therefore, the contention that the IASR filed before the trial Court by the present revision petitioners is a parallel proceeding and it precludes this Court from exercising jurisdiction under Article 227 of the Constitution of India is not well founded and therefore, deserves to be rejected. The said contention is accordingly rejected.

9. Before parting with the case, it is necessary to advert to one more aspect urged by the learned senior counsel for the revision petitioners. He would submit that without prejudice to the submission that Order VI Rule 18 of the Code has no application to the present context and assuming for a

moment that the said provision is applicable still the said provision is only procedural in nature and hence, shall not come in the way of doing substantial justice. The Supreme Court in a number of decisions had held that rules of procedure are intended to be a handmaid to the administration of justice and a party cannot be refused just relief merely because of mistake, negligence, inadvertence or even infraction of the rules of procedure. That apart, it is cardinal principle of law that merely on the ground of technicalities, justice should not be thwarted at the threshold. In **Bamungachi Rising Club v. Shayamal Kumar Ghosh** ^[6], the Calcutta High Court having regard to the ratio in the decision of the Supreme Court in **Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon [AIR 1969 SC 1267]** held *inter alia* as follows: '**Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure.**' In the case on hand, if the revision petitioners' application to implead them as plaintiffs 2 to 6 though is already allowed was to be dismissed for not carrying out the amendment within a time frame of 14 days, it would lead to denial of substantial justice at the threshold even without providing them an opportunity to have their cause decided on merits.

Further, in the decision in **Banwari Lal v/s Balbir Singh** ^[7] the Supreme Court held as follows:

Provisions of Order XXII Code of Civil Procedure are not penal in nature. It is a rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspects of law.

10. In the case on hand, the application of the revision petitioners for permission to come on record as plaintiffs 2 to 6, they being the legal representatives of the deceased sole plaintiff, is allowed by the Court below. Since the said application had already been allowed, the revision petitioners cannot be declined to amend the cause titles and prosecute the suit merely on the ground of delay; and, merely for infraction of a rule of procedure, their substantive rights cannot be allowed to be defeated.

10. Viewed thus, this Court finds that the revision petition is having acceptable merit and that the order impugned calls for interference.

11. In the result, the Civil Revision Petition is allowed and the order impugned dated 22.10.2013 is set aside. Needless to state that the trial Court shall now permit the revision petitioners/plaintiffs 2 to 6 to amend the cause title (short and long) in the plaint and file a neat copy of the plaint in accordance with the procedure established by law. Considering the fact that the suit is a sufficiently old suit, the revision petitioners are directed to do the needful in the matter as per directions in this order within twenty days from the date of the receipt of a copy of this order.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.SEETHARAMA MURTI, J

31st March, 2016

Note: LR copy to be marked.

(B/o)

Vjl

[1] AIR 1976 Karnataka 29

[2] 2000 AIHC 4701

[3] 2005 LawSuit (Guj) 195

[4] AIR2003SC3044

[5] AIR 2015 3269

[6] 1996 A I HC 1694

[7] AIR 2015 3573