

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2282 OF 2016

ORDER:

This revision petition, under Article 227 of the Constitution of India, is filed challenging the Order dated 29.02.2016 in I.A. No.6 of 2016 in O.S.No.2089 of 2014 passed by the II Junior Civil Judge, City Civil Court, Hyderabad, whereby the respondent herein was permitted to amend the pleadings deleting the admission regarding seizure of Mahendra Car and sale of the same for realization of the debt due to the Bank.

02. The revision petitioner herein is the defendant and the respondent herein is the plaintiff in the suit. They will hereinafter be referred as the plaintiff and defendant, for convenience of reference.

03. The plaintiff filed a petition in I.A. No.6 of 2016 under Rule 17 of Order VI of the Code of Civil Procedure, 1908 (for short, 'CPC') to amend the plaint as a mistake was occurred at line 4 of paragraph 3, at page 2, of the plaint and the said mistake is not intentional or deliberate. Since public money involved, the said mistake is to be deleted and prayed to allow the petition.

04. The defendant filed counter contending that a judicial admission made in the pleadings cannot be taken away by way of amendment and therefore prayed for dismissal of the petition.

05. The trial court, after hearing both the counsel, allowed the petition, permitting the amendment of the plaint, assigning its own reasons, more particularly, with regard to such defect or mistake can be rectified at any stage by filing an application under Rule 17 of Order VI of CPC

06. Learned counsel for the plaintiff/ respondent contended that the amendment can be allowed at any stage. Since the public money involved in the matter, amendment petitions can be

construed liberally and grant relief in the petitions and has drawn the attention of this Court to an unreported Judgment of the Apex Court in Civil Appeal No.1323 of 2015 between **MOUNT MARY ENTERPRISES v. M/S. JIVRATNA MEDI TREAT PVT. LTD.**

07. Whereas learned counsel for the defendant/ revision petitioner has drawn the attention of this Court to the Judgment of the Apex Court in **J.SAMUEL AND OTHERS v. GATTU MAHESH AND OTHERS**^[1] to contend that amendment cannot be permitted to fill up the lacuna and prayed to set aside the Order under challenge, while allowing the revision petition.

08. As seen from the plaint, there is specific allegations at paragraphs 3 and 4 that the plaintiff made demand for payment of the debt due to regularize the loan account and the plaintiff Bank seized the vehicle, sold the same and the amount realized was adjusted towards the amount due and therefore, on account of such judicial admission, the defendant/ revision petitioner gain advantage and such admission cannot be taken away by amending the plaint under Rule 17 of Order VI of CPC and the alleged mistake pointed out in the plaint cannot be construed as typographical mistake and it is an unequivocal admission of adjustment of the debt due after realizing the amount after sale of the car. In the unreported Judgment of the Apex court in Civil Appeal No.1323 of 2015, the Apex Court, relying on the earlier Judgments, held that when the property was initially under valued in the plaint and by virtue of the amendment under Rule 17 of Order VI of CPC to correct such mistake. But here the plaintiff/ respondent wanted to withdraw the unequivocal admission about the adjustment of the amount realized by the car towards the amount due by the defendant/ revision petitioner. They would give fair advantage to the defendant/ revision petitioner and amendment to withdraw such admission cannot be permitted.

09. In **J. SAMUEL**'s case, the Apex Court construed what is 'typographical mistake' and held that the admission or omission to plead readiness and willingness in a suit for specific performance by the plaintiff cannot be construed as typographical mistake, since it is a requirement in suit under Section 16(c) of the Specific Relief Act, 1963 and dismissed the petition filed under Rule 17 of Order VI of CPC. Even, otherwise, earlier the Apex Court laid down certain guidelines in **REVAJEETU BUILDERS AND DEVELOPERS v. NARAYANASWAMY AND SONS AND OTHERS**^[2] to order amendment application. Even if those guidelines are applied to present the facts of the case, an unequivocal admission or judicial admission in the pleading cannot be taken away, since that amounts to withdrawal of admission that would take away valuable right that accrued to the defendant in the main suit.

10. Hence, the trial court erroneously exercised its power under Rule 17 of Order VI of CPC, allowed the amendment application and the same is liable to be set aside in view of the principles laid down by the Apex Court in the Judgments referred to supra.

11. Accordingly, the revision petition is allowed setting aside the Order 29.02.2016 in I.A. No.6 of 2016 in O.S.No.2089 of 2014 passed by the II Junior Civil Judge, City Civil Court, Hyderabad. No costs.

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

M. SATYANARAYANA MURTHY, J

Date: 27.08.2016

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^[1] 2012 AIR SCW 1035

^[2] 2009(8) SCJ401