

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Civil Revision Petition No.6233 of 2016

Date: 30.12.2016

Between:

Sri Kosuri Seetharama Murthy and another

.. Petitioners

and

Smt.Kosuri Tejaswini and another

.. Respondents

Counsel for the Petitioners : Mr.KV.Sekhar for Mr.Jayanthi SC.Sekhar

The Court made the following:



Order :

This Civil Revision Petition arises out of Order, dated 26.07.2016, in IA No.295 of 2016 in OS.No.155 of 2008 on the file of the Principal Junior Civil Judge, Narsipatnam.

I have heard Mr.KV.Sekhar, learned Counsel representing Mr.Jayanthi SC Sekhar, learned Counsel for the petitioners, and perused the record.

Respondent No.1, who is the minor daughter of petitioner No.1, filed OS.No.155 of 2008 through her mother seeking monthly maintenance of Rs.1,500/- in the year 2008. After commencement of trial, she has filed IA.No.295 of 2016 under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) and Rule 28 of the Civil Rules of Practice, seeking amendment of the plaint by adding Sub-Para (c) to Para III regarding the details of the salary being earned by petitioner No.1. This Application was opposed by the petitioners. By the Order under Revision, the lower Court has allowed the IA.

The learned Counsel for the petitioners has strenuously argued that under the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC), no application for amendment shall be allowed 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 the trial and that respondent No.1 has not pleaded that the additional pleadings that are sought to be raised were not in his knowledge despite due diligence.

In Paragraph 3 of the affidavit of the mother of respondent No.1, filed in support of the IA, it is stated as under:

“3. My husband ie., R-1 is working as Telugu Teacher in M.P.P.U.P.School, Pydipala Village and getting about Rs.33,000/- P.M., as salary. I am informed that in the original plaint there is no proper explanation about the earnings and financial capacity of defendant No.1. This proposed amendment is clarification of means of the 1st defendant and do not change the nature of the suit claim or pleas of the defendants.

Therefore, I am also advised to add following para III C after present para B, and present para c may be corrected as para D.

“III.C) The 1st defendant is working as Telugu Teacher in M.P.U.P. School, Pydipala, and is earning Rs.20,000/- per month during 2008. Now due to subsequent Pay Revisions the 1st defendant is getting a monthly salary of Rs.33,000/-. The plaintiff submits that irrespective of the ancestral Schedule property, the 1st defendant out of his salary, financially sound and having capacity to provide maintenance to the plaintiff. Even though he is bound to maintain his minor daughter the plaintiff, the defendant was not paying any thing to the plaintiff not made any arrangement for her food, clothing, education and medical expenses etc.”

From a careful perusal of the above quoted averments, it is clear that when the OP was filed, petitioner No.1 was allegedly drawing Rs.20,000/- per month and that under the subsequent pay revisions, he is allegedly getting a monthly salary of Rs.33,000/-. The subsequent pay revisions obviously took place after the filing of the OP. Therefore, at the time of filing the OP, respondent No.1 was not expected to come out with the events, which have occurred after the filing of the OP. No doubt, in his affidavit, respondent No.1 has not religiously repeated the words 'that in spite of due diligence' occurring in the proviso to Order VI Rule 17 CPC. The Court nevertheless can take into consideration the facts and circumstances of the case and presume existence of due diligence in a matter of this nature when the facts sought to be pleaded by respondent No.1 are in exclusive knowledge of petitioner No.1. The Court needs to take a liberal view whenever such facts, which were evidently gathered by the adverse party such as respondent No.1 at a later point of time, were sought to be pleaded by way of amendment. Eventually, the Court has to adjudicate the case based on the true facts of the case without relying upon hyper-technicalities. If petitioner No.1 is earning higher salary as pleaded by respondent No.1 and if such fact is not allowed to be pleaded by

respondent No.1 on technicalities, it would cause grave failure of justice.

For the afore-mentioned reasons, I do not find any merit in this Civil Revision Petition and the same is, accordingly, dismissed.

As a sequel to dismissal of the Civil Revision Petition, CRPMP.No.8168 of 2016, filed by the petitioners for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 30th December, 2016
lur

