

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2017

CORAM :

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

**C.R.P.(PD).No.146 of 2017
and C.M.P.No.630 of 2017**

1. M.E.Rajendran
2. Dhanalakshmi

... Petitioners

Vs.

S.Kumar

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the decree and order made by the XI Assistant Judge, City Civil Court, Chennai made in I.A.No.5248 of 2016 in O.S.No.6480 of 2013 dated 02.11.2016 to set aside the same.

For Petitioner : Mr.R.Venkatesan

For Respondent : Mr.R.Sreedharan

ORDER

The defendants have filed the above revision petition

challenging the order allowing the amendment application under Order VI Rules 16 and 17 C.P.C. The amendment application was filed by the plaintiff, who filed the suit for permanent injunction restraining the defendants from evicting them, unless by due process of law.

2. It is stated by the plaintiff that in the original plaint, the plaintiff had paid a sum of Rs.20,000/- (Rupees twenty thousand only) as advance of rent and agreed to pay a sum of Rs.1,500/- (Rupees one thousand and five hundred only) as monthly rent from the year 1994 and in the year 2000, the rent was enhanced by Mr.Nesu at Rs.3,000/- (Rupees three thousand only) per month. But, the plaintiff wanted to delete the said pleadings and insert it as "the monthly rent was fixed in the year 1994 as Rs.500/- (Rupees five hundred only) and an advance of Rs.20,000/- (Rupees twenty thousand only) was paid, but the petitioner has also paid a sum of Rs.2,00,000/- (Rupees two lakhs only) in the month of June 1999 towards enhanced advance amount."

3. The plaintiff further states that the above amendment will not change the cause of action stated in the plaint and alter the basic structure of the suit.

4. The said amendment application was resisted by the defendants stating that even in the suit notice, the rent was only stated as Rs.3,000/- and an advance amount of Rs.20,000/- was mentioned, for which, reply notice was also sent by the defendants. After framing of issues and chief examination of the plaintiff was over, the present amendment is sought for by the plaintiff, which is not permissible and hence the defendants prayed for dismissal of the said application.

5. The trial Court, without considering the real controversy between the parties, allowed the amendment on payment of Rs.1,000/- as costs. Aggrieved by the same, the above revision petition has been filed by the plaintiff.

6. Heard both sides and perused the materials available on record.

7. Though the plaintiff has stated that it is the typographical error, the trial Court has allowed the same without assigning any reason by merely relying on the statement of the plaintiff in the absence of any proof for the same. Admittedly, the trial has commenced and P.W.1 is being examined, and the plaintiff without even stating any reason for the delay in filing the amendment application or without even proof, has filed the application, which would substantially change the scheme of the suit. The change of monthly rent as well as the advance amount paid cannot be deemed to be a typographical error. Hence, the amendment allowed is not sustainable. When it is a post-trial amendment in a suit, which is pending for more than three years, the trial Court should not have entertained the amendment without any reason for the delay or proof. Hence, the impugned

order of the trial Court has to be set aside.

8. Accordingly, the impugned order is set aside. The Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

31.01.2017

srn

To

The XI Assistant Judge, City Civil Court,
Chennai

PUSHPA SATHYANARAYANA.J

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