

O.A.Nos.496 & 497 of 2017
in
O.P.No.529/2015

V.PARTHIBAN, J.

The present applications are filed by the applicant/plaintiff seeking an amendment in the plaint prayer in the original petition and to reopen and recall evidence on the side of the applicant/plaintiff.

2.According to the applicant/petitioner, the prayer originally sought in the original petition was wrongly framed without understanding the implication of the same. When the petitioner came to know about wrong framing of the prayer, the present application is filed for amendment of the prayer. Along with the amendment to the main prayer, another application was also taken out for recalling and re-opening of the applicant/petitioner's witnesses for the purpose of marking certain documents. According to the applicant/petitioner, if the prayer for amendment is not allowed, then prejudice to be caused to the applicant/petitioner and he would suffer an imparable injury and hardship.

3.Per contra, learned counsel for the respondent would vehemently oppose the allowing of the application, on the ground that though the applicant/petitioner was aware that the prayer sought for was wrongly framed, however, kept quite till completion of the trial. As regards the other application namely re-opening and re-calling the evidence, it is submitted by the learned counsel for the respondent that at this stage, the same cannot be done. In support of the contention, the learned counsel relied on the judgment passed by the Hon'ble Supreme Court of India reported in **[2012] 2 Supreme Court Cases 300** in the matter of **[J.Samuel and Others -Vs- Gattu Mahesh and Others]** and drew the attention of this Court to para 19 of the said judgment which is extracted below:

“ 19.Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term “due diligence” is specifically used in the Code so as to

provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial”

4.The learned counsel also cited another decision reported in **[2011-4-L.W.544]** in the matter of **[M/s.Pan Resorts Limited & another .Vs. H.H.Karthika thirunal lakshmi Bayi and Others]** and the relevant portion of para 24 of the judgment is extracted below:

“.....Therefore, at this stage, if the applications filed by the plaintiff is allowed, it will only enable the plaintiff to fill up the lacuna and it is legally impermissible. Therefore, we do not find any reason to interfere with the reasoned order of the learned single Judge.

In the said decision, a Division Bench of this Court has held that if the applications filed by the plaintiff are allowed at the belated stage, it will only enable the plaintiff to fill up the lacuna and it is legally impermissible. In the above circumstances, the applications have to be dismissed.

5. In reply to the submission, the learned counsel appearing for the applicant/petitioner would submit that no prejudice would be caused to the either side, if the applicant/petitioner's evidence is re-opened and the petitioner is examined and the admissibility or otherwise, can be decided at the time of trial. In such an event, there cannot be valid objections from the respondent's side. As regards the amendment of the prayer is concerned, the same is being done in terms of the legal provisions and the respondent's cannot have any objection to this.

6. Considering the submissions made by the learned counsel on either side and on perusal of the necessary records and the pleadings, this Court is of the view that the applications which are filed by the applicant/petitioner are liable to be allowed. In the said circumstances, both the applications, for amendment to the prayer and for re-opening and re-calling of the evidence on the side of the applicant/petitioner, are allowed.

7.Post before the learned Ist Additional Master on
23.06.2017, for recording evidence as expeditiously as possible.

20.06.2017

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