IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2649 of 2014
& M.P.No.1 of 2014

B.Sugumar .. Petitioner

Vs.

The Arcot Lutheran Church
Represented by the Secretary
of the Church Board
ALC complex, Cuddalore. .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 21.03.2014 made in I.A.No.17016 of 2013 in O.S.No.2441 of 2008 on the file of the XVIII Assistant City Civil Court, Chennai.

For Petitioner : Mr.M.Kumaraswami
For Respondent : M/S.Srinath Sridevan

ORDER

This civil revision petition has been filed against the fair and decreetal order dated 21.03.2014 made in I.A.No.17016 of 2013 in

O.S.No.2441 of 2008 on the file of the XVIII Assistant City Civil Court, Chennai.

2. The petitioner is the defendant and respondent is the plaintiff in O.S.No.2441 of 2008 on the file of the XVIII Assistant City Civil Court, Chennai. The respondent filed the suit for a decree for quit and delivery of vacant possession of the suit property in favour of the respondent as against the petitioner and for a direction to the petitioner to pay a sum of Rs.1,000/- per month as damages for use and occupation from the date of filing of the suit till the date of handing over the delivery of the suit property. The petitioner filed written statement in the month of October 2008 and is contesting the suit. Trial commenced. The respondent let in evidence on his behalf and closed their side. At that time, the petitioner filed I.A.No.16174 of 2009 for permission to file additional written statement.

3. According to the petitioner, after issuance of notice terminating the tenancy, monthly rent was increased from Rs.385/- to Rs.850/- and by increase of the rent, fresh tenancy came into force. The said application was dismissed and challenging the

same, the petitioner filed C.R.P.(PD)No.1335 of 2010 before this Court and the same was also dismissed by this Court on 05.07.2013.

4. The petitioner filed I.A.No.17016 of 2013 for permission to amend the written statement earlier filed by him to include some averments mentioned in the additional written statement sought to be filed. According to the petitioner, this Court, while dismissing the C.R.P.(PD)No.1335 of 2010 on 05.07.2013, came to the conclusion that the petitioner has to file an application under Order VI Rule 17 of C.P.C. to amend the written statement. In view of the said order, the petitioner has filed the present application.

5. The respondent filed counter affidavit opposing the said application and denied that this Court did not grant any liberty to the petitioner to file application for amendment of the written statement. The present application is hit by the principles of resjudicata, as earlier application for the very same relief has been dismissed on merits. The amendment of the written statement cannot be allowed after commencement of trial and completion of evidence of the respondent. The amendment now sought for is not

an omission to raise the same by mistake and the petitioner could not have raised the issue before commencement of trial in spite of due diligence, as he admitted that he has not raised this issue by mistake.

6. The learned Judge considering the averments made in the affidavit, counter affidavit, materials available on record and judgments relied on by the learned counsel for the respondent, dismissed the application.

7. Against the order of dismissal dated 21.03.2014 made in I.A.No.17016 of 2013, the present civil revision petition is filed by the petitioner/defendant.

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

9. The learned counsel for the respondent has relied on the following judgments in support of his contention:

(i) ***(2008) 7 SCC 85 (Gautam Sarup v. Leela Jetly and others),*** in para-28, it is held as follows:

"28. What, therefore, emerges from the discussions made hereinbefore is that a categorical admission cannot be resiled from but, in a given case, it may be explained or clarified. Offering explanation in regard to an admission or explaining away the same, however, would depend upon the nature and character thereof. It may be that a defendant is entitled to take an alternative plea. Such alternative pleas, however, cannot be mutually destructive of each other."

(ii) ***(1998) 1 SCC 278 (Heeralal v. Kalyan Mal and others),*** in para-7 to 10, it is held as follows:

"7. .. .. .. The defendant from the inception contended that the plaintiff's suit should be dismissed but the ground on which dismissal was claimed was sought to be changed by an alternative plea. Therefore, there was no question of any prejudice to the plaintiff if such an inconsistent stand was allowed. That is how this Court in the aforesaid decision held that such amendment in written statement could have been granted. Such is not the case before us. .. ..

8. .. .. .. The defendant in the written statement had earlier stated that it was true that the defendant entered into such an agreement but

by an amendment an averment was sought to be introduced in the written statement to the effect that it is incorrect to state that the defendant agreed to enter into agreement of sale. ... ..

9. .. .. The facts of the present case are entirely different and consequently the said decision also cannot be of any help for the learned counsel for the respondents. Even that apart, the said decision of two learned judges of this Court runs counter to a decision of a Bench of three learned judges of this court in the case of Modi Spinning & Weaving Mills Co. Ltd. & Anr. v. Ladha Ram & Co. [(1977) 1 SCR 728]. In that case Ray, CJ., Speaking for the Bench had to consider the question whether the defendant can be allowed to amend his written statement by taking an inconsistent plea as compared to the earlier plea which contained an admission in favour of the plaintiff. It was held that such an inconsistent plea which would displace the plaintiff completely from the admissions made by the defendants in the written statements cannot be allowed. .. ..

10. Consequently it must be held that when the amendment sought in the written statement was of such nature as to displace the plaintiff's case

it could not be allowed as ruled by a three member Bench of this Court. This aspect was unfortunately not considered by the latter Bench of two learned Judges and to the extent to which the latter decision took a contrary view qua such admission in written statement, it must be held that it was per incuriam being rendered without being given an opportunity to consider the binding decision of a three-member Bench of this Court taking a diametrically opposite view."

(iii) ***2013-3-L.W.262 (S.Malla Reddy v. M/S.Future Builders Co-operative Housing Society and others),*** in para-24, it is held as follows:

"24. .. .. The relevant portion of the order quoted hereinabove reveals that the trial court while rejecting the aforementioned petition held that the defendant-appellants cannot be allowed to substitute their earlier written statement filed in the suit whereunder there was an admission of the claim of the plaintiff-Society (respondent herein). Similarly in the revision filed by the defendants, the High Court considered all the decisions referred by the defendants on the issue as to whether the defendants can withdraw the admission made in

the written statement and finally came to the conclusion that the defendant-appellants cannot be allowed to resile from the admission made in the written statement by taking recourse to Order VIII Rule 9 or Order VI Rule 16 CPC by seeking to file a fresh written statement. In the aforesaid premises, filing of a fresh petition by the defendants under Order VI Rule 17 CPC after about 13 years when the hearing of the suit had already commenced and some of the witnesses were examined, is wholly misconceived. The High Court in the impugned order has rightly held that filing of subsequent application for the same relief is an abuse of the process of the court. As noticed above, the relief sought for by the defendants in a subsequent petition under Order VI Rule 17 CPC was elaborately dealt with on the two earlier petitions filed by the defendant-appellants under Order VI Rule 16 and Order VIII Rule 9 CPC and, therefore, the subsequent petition filed by the defendants labelling the petition under Order VI Rule 17 CPC is wholly misconceived and was not entertainable."

10. This Court by order dated 05.07.2013 made in C.R.P.(PD)No.1335 of 2010, held that the petitioner ought to have filed the application for amendment and not application for

permission to file additional written statement.

11. A reading of the order reveals that this Court has not given any liberty to the petitioner to file application for amendment of the written statement. The petitioner is seeking to amend the written statement to include the plea**,** which was sought in the additional written statement to be filed. This plea was negatived by the lower Court as well as by this Court. The issue was decided on merits.

12. As rightly submitted by the learned counsel for the respondent that a decision made in earlier part of the suit can be a resjudicata, when the same is raised in the same suit at later stage. Further, the petitioner having admitted that the monthly rent is Rs.385/- and now he cannot take a plea that the monthly rent has been enhanced to Rs.850/- and fresh lease had come into force. The respondent had let in evidence based on the pleadings and if the amendment is ordered, it will greatly cause prejudice to the respondent.

13. As per Order VI Rule 17 of CPC, an amendment can be

allowed after commencement of trial only if the party alleges and proves that he could not have filed a petition before commencement of trial in spite of due diligence. The judgments relied on by the learned counsel for the respondent are squarely applicable to the facts of the present case.

14. In view of the above, the petitioner is not entitled to amendment sought for in the written statement, as he is trying to resile from the admission made by him in the written statement. There is no merits in the Civil Revision Petition. The Civil Revision Petition is devoid of merits.

15. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

29.06.2017

Index : Yes/No

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To

XVIII Assistant City Civil Court, Chennai.

V.M.VELUMANI, J.

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