

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.4016 Of 2017

ORDER:

1 This Civil Revision Petition, under Article 227 of the Constitution of India is filed challenging the order dated 26.04.2017 passed in I.A.No.404 of 2016 in O.S.No.7 of 2009 on the file of the Court of the Principal Junior Civil Judge, Sathupally, wherein and whereby the petition filed by the petitioner under Order VI Rule 17 CPC seeking to amend the written statement was dismissed.

2 The learned counsel for the petitioner strenuously submitted that the defendant is entitled to amend the written statement at any stage of the proceedings. He further submitted that by oversight the petitioner could not take steps to amend the written statement. He further submitted that even if the petition is allowed, the same would not cause any prejudice to the respondent / plaintiff. He further submitted that the trial court without considering the scope of Order VI Rule 17 CPC dismissed the petition on erroneous grounds.

3 The point that would arise for consideration in this Civil Revision Petition is 'whether the trial court is not justified in dismissing the petition?

4 A perusal of the record reveals that the respondent filed O.S.No.7 of 2009 on the file of the Court of the Principal Junior Civil Judge, Sathupally against the petitioner for recovery of an amount of Rs.86,335/- basing on a promissory note dated 24.01.2006. The petitioner filed written statement on 30.04.2009 denying the averments made in the plaint, inter alia contending that he paid the suit amount and hence the suit is not maintainable.

5 It is not in dispute that the suit is coming up for defendant's side evidence. While the things stood thus, the petitioner filed I.A.No.404 of 2016 under Order VI Rule 17 CPC seeking to amend the written statement and add para Nos.3 (a), 3 (b) 3 (c) and 5 (a), 5 (b) and 5 (c).

6 In order to appreciate the contention of the learned counsel for the petitioner this Court carefully perused the material available on record. A perusal of the record reveals that legal notices were exchanged between the parties prior to the filing of the suit by the respondent. It is needless to say that the litigation starts in civil matters the moment the legal notice is being issued. The petitioner filed counter in the petition filed by the respondent under Order 38 rule 5 CPC, taking a specific plea that he paid the suit amount to third parties. In the written statement also the petitioner has taken a specific stand that he paid the entire suit amount.

7 One of the grounds raised by the learned counsel for the petitioner is that the Court can allow the amendment petition at any stage of the proceedings. It is needless to say that the petitioner has to establish that in spite of due diligence he could not take such a plea at the earliest point of time. A perusal of the record reveals that the petitioner has taken the same plea even in the reply notice as well as in the counter filed by him in the petition filed by the respondent under Order 38 Rule 5 CPC. Whatever the petitioner is intending to bring on record by way of amendment to the written statement is within his exclusive knowledge much prior to the filing of the written statement.

8 At the time of argument, the learned counsel for the petitioner submitted that the petitioner has changed the counsel frequently, therefore, he could not file the amendment petition at the earliest point of time. Mere change of counsel will not create any right in favour of the parties to the proceedings to file amendment petition, at their whims and fancies, at any stage of proceedings. I have carefully scanned the affidavit filed by the petitioner. The petitioner has not assigned reasons much less cogent and valid reasons that in spite of due diligence he could not file the petition for amendment at the earliest point of time. When the matter is coming up for cross examination of D.W.1 he filed the present petition. It is not uncommon in civil matters to file this type of petitions with an ulterior motive to drag on the proceedings. It is needless to say that one has to satisfy the ingredients of Order VI Rule 17 CPC for allowing the amendment petition. The affidavit filed by the petitioner is bereft of the basic ingredients of Order VI Rule 17 CPC. There is no mention in the affidavit that in spite of due diligence he could not get the information till filing of amendment petition. Thus, the petitioner miserably failed to prove the ingredients of Order VI Rule 17 CPC. Even if the petition is dismissed, the same would not cause any prejudice to the petitioner. On the other hand, if the petition is allowed, the same may cause prejudice to the respondent. The trial Court has assigned reasons much less cogent and valid reasons while dismissing the petition. I am fully agreeing with the observations recorded by the trial court.

9 While exercising the jurisdiction under Article 227 of the Constitution of India, this court cannot lightly interfere with the order passed by the trial court unless there is illegality or irregularity apparent on the face of the record. Viewed from factual or legal aspects, this Civil Revision Petition is liable to be dismissed.

10 Hence the Civil Revision Petition is dismissed. No order as to costs. As a sequel, miscellaneous petition, if any, pending in this Civil Revision Petition shall stand dismissed.

Date: 08.09.2017
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T. SUNIL CHOWDARY, J.