

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1805 of 2017

ORDER:

This civil revision petition under Article 227 of the Constitution of India is filed challenging the order dated 06.01.2017 passed in I.A.No.1584 of 2016 in O.S.No.306 of 2016 by the III Additional Chief Judge, City Civil Court, Hyderabad dismissing the application filed under Order VI Rule 17 of Code of Civil Procedure (for short "C.P.C.") rejecting leave to amend the plaint.

The petitioners filed the petition under Order VI Rule 17 of C.P.C. seeking leave of the Court to amend the plaint to incorporate paragraph mentioned in the petition alleging that when I.As.780 and 781 of 2016 in O.S.No.306 of 2016 came up for hearing, the respondents raised a specific contention that the petitioners suppressed the factum of filing earlier suit O.S.No.501 of 2015 and incidental proceedings therein. Thereupon, the petitioners realised the importance of disclosing those facts. The petitioners filed memo withdrawing O.S.No.501 of 2015 pending on the file of II Additional Chief Judge, City Civil Court, Hyderabad, but the memo is still pending before the said Court. Therefore, the petitioners having filed memo to withdraw the suit O.S.No.501 of 2015, under the wrong impression that there is no need to disclose the earlier proceedings in suit O.S.No.501 of 2015 and incidental proceedings therein, they did not mention the same

in O.S.No.306 of 2016. Hence, petitioners seek leave of the Court to amend the plaint.

The respondents filed counter denying material allegations in the petition inter alia contending that the petitioners suppressed the factum of filing earlier suit O.S.No.501 of 2015. One of the main contentions raised by the respondents in the interlocutory applications is that similar petition in I.A.No.1194 of 205 in O.S.No.501 of 2015 was dismissed by the II Additional Chief Judge and had the said fact been disclosed in the present suit, the Vacation Civil Judge ought not to have granted ex parte injunction. Therefore, the petitioners intentionally suppressed the material fact, hence they are disentitled to claim any relief in the present petition. Therefore, suppression of filing of earlier suit and adverse findings in I.A.No.1194 of 2015 itself is fraud and the respondents when specifically pleaded in counter and written statement, no leave can be granted to the petitioners to amend the pleadings i.e. plaint by incorporating the particular paragraph.

It is also contended that when the respondents heavily banking on suppression of earlier suit and amendment to the present suit and petitions, is being sought by a superior caution is again misconceived and untenable. Consequently, no leave can be granted and prayed for dismissal of the petition.

Upon hearing argument of both the counsel, the trial Court dismissed the petition on the ground that when I.A.No.781 of 2016 was posted for orders after hearing both the counsel the present petition to reopen the I.A.No.781 of 2016 was filed. The contention of the petitioners that the suit was withdrawn, hence the amendment has to be affected as no orders were passed by the II Additional Chief Judge on the memo cannot be considered in the present petition when there is no pleading that the memo was filed not reserving right to file fresh suit, the petitioners are bound to disclose the same and when it was not disclosed, it would affect the defence of the respondents, thereby the amendment cannot be allowed and dismissed the petition accordingly.

Aggrieved by the order of dismissal, the present revision was filed on various grounds mainly on the ground that the trial Court did not consider the effect of amendment when leave was sought for even before commencement of trial and when such pre-trial amendment is sought for, the Court is bound to allow such amendments, but after commencement of trial, there is a clear interdict on the power of the Court to allow such amendments in view of the proviso to Order VI Rule 17 of C.P.C. Therefore, order passed by the trial Court is without any legal basis and prayed to set aside the same.

During hearing, learned senior counsel Sri E.Venugopal on behalf of Sri Ch.Siddhartha Sarma, counsel on record for the revision petitioners, reiterated the contentions urged in

the main petition while contending that pre-trial amendment can be allowed and the bar under proviso to Order VI Rule 17 of C.P.C. introduced by Act 22 of 2002 has no application to the present facts of the case. Consequently, dismissal of application by the trial Court is erroneous and prayed to set aside the same.

Per contra, Sri P.Shiv Kumar, learned counsel for the respondents, contended that when the petitioners raised a specific plea about the suppression of material fact, if such amendment is allowed, it would directly take away the valuable right that accrued to the respondents and cause prejudice to them and thereby such amendment cannot be permitted at this stage and prayed for dismissal of the petition.

Considering rival contentions and perusing material available on record, the point that arises for consideration is as follows:

Whether the proposed amendment would change the nature of the suit or its constitution and would it take away the valuable right, if any, accrued to the respondents or withdraws any unequivocal admission made in the plaint, if so, whether the order passed by the trial Court be sustained?

P O I N T:

Normally when petitions under Order VI Rule 17 of C.P.C. are filed at pretrial stage, Court would order such

applications granting leave to parties to amend their pleadings and if it is post-trial amendment, then Court may put on guard in allowing such applications since it would cause prejudice to the other parties to the suit or proceedings. In the present case on hand, the suit was filed for various reliefs and the present fact said to be brought on record by way of proposed amendment is only due to mistake committed by the petitioners for not bringing certain facts i.e. filing of earlier suit O.S.No.501 of 2015 and I.A.No.1194 of 2015. The reason for failure to bring those facts on record is that the petitioners filed a memo withdrawing the suit, but instead of passing order, the II Additional Chief Judge, kept the memo pending. Therefore, the petitioners failed to bring to the notice of the Court facts pertaining to earlier proceedings. According to the petitioners the stage of the suit by the date of filing the petition is that the written statement was filed by the defendants therein on 09.11.2016.

According to Order VI Rule 17 of C.P.C., the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. The principles to allow petitions under Order VI Rule 17 of C.P.C. are well settled, namely; the amendment shall not alter the basic structure or nature of the claim and that the amendment

shall not take away the valuable right that accrued to the respondents or such amendment would not amount to withdrawal of unequivocal admissions made in the pleadings as held by the Apex Court in “**Rajkumar Guruwara (dead) through LRs Vs. S.K. Sarwagi and Company Private Limited and another**”¹. In view of the law declared by the Apex Court in the above judgment, the Court has to find out whether the proposed amendment would fall within the parameters laid down by the Apex Court and if it would fall within the ambit of the guidelines, Courts can allow such amendments, otherwise reject the same.

The only contention of the counsel for the respondents before this Court is that if amendment is allowed, valuable right that accrued to the respondents would be taken away. The petition before the trial Court was filed on 21.11.2016, whereas written statement was filed on 09.11.2016. Therefore, 13 days prior to filing of the present petition, respondents/defendants filed written statement, thereafter it was adjourned to 11.11.2016. In paragraph Nos.17, 18, 19 of the written statement, the respondents/defendant Nos.1 to 3, 5, 8 and 9 specifically asserted about the suppression of material facts i.e. filing of suit O.S.No.501/2015 on the file of II Additional Chief Judge, Hyderabad and I.A.No.1194 of 2015 and orders passed thereon including earlier C.M.A.No.930 of 2015 before this Court etc. Suppression of such facts is a

¹ (2008) 14 SCC 364

matter of serious concern and even if petitioners withdrew suit O.S.No.501 of 2015, still the duty is cast upon the petitioners to disclose filing of the suit and various proceedings in the said suit, but conveniently petitioners did not disclose those facts, but by filing the present petition, the petitioners wanted to overcome the difficulty for non-disclosure of those facts. But in view of the settled principles of law laid down in “**Rajkumar Guruwara (dead) through LRs Vs. S.K. Sarwagi and Company Private Limited and another**” (referred supra) if any valuable right that accrued to the respondent and proposed amendment takes away such valuable right, the amendment cannot be allowed. The alleged suppression would not confer any valuable right on the respondents and it is only one of the grounds to resist the claim in the main suit. The suit was filed for various reliefs including the relief to declare that the registered sale deed dated 27.05.2013 and sale deed dated 01.11.2013 and development agreement dated 09.02.2015 as null and void and not binding on the plaintiffs and for refund of amount of Rs.38,50,000/- and damages and for perpetual injunction. Therefore, main reliefs claimed in the plaint are mostly discretionary reliefs under Section 34 of Specific Relief Act and to claim said relief, the petitioners must approach the Court with clean hands. When the petitioners/plaintiffs approached the Court with tainted hands, the petitioners are disentitled to claim such reliefs.

Learned Senior Counsel appearing for the petitioners contended that when the petitioners allegedly suppressed a particular fact, they can bring those facts on record and when the petitioners approached the Court with unclean hands and if such dirt is removed, they are entitled for the reliefs in the main suit, in support of his contentions he placed reliance on “**Arunima Baruah v. Union of India**”². In view of the law declared by the Apex Court in the said judgment, when the petitioners approached the Court with unclean hands, later if they disclosed the said fact, the Court has to consider whether such fact is material fact or not and even if it is material fact, if it is brought on record by amending the plaint and its effect has to be decided at the time of granting reliefs in the suit.

Though in various judgments, the Apex Court laid down certain guidelines for amendment of pleadings, but in none of the judgments placed by record by either of the counsel did not disclose how the valuable right is accrue to the respondent. Sri P.Shiv Kumar, learned counsel for the respondents contended that when discretionary relief is sought for by the petitioners and approached the Court by suppressing facts, such suppression of facts disentitled them to claim such relief and placed reliance on “**S.P.Chengalvaraya Naidu v. Jagannath**”³

² (2007) 6 SCC 120

³ (1994) 1 SCC 1

In the present case, in view of the defence raised by the respondents in the written statement and counters in interlocutory applications, it is clear that the petitioners wanted to bring those facts on record by amending the plaint during pre-trial stage. In such case the Court has to allow such amendments liberally since such facts though not decisive for deciding the suit, but when the petitioners claiming discretionary relief under Sections 34 and 38 of Specific Relief Act, they must disclose such facts; that apart it appears under bonafide impression that filing of memo is sufficient the petitioners, did not disclose those facts.

In “**A.Krishna Rao Vs. A.Narahari Rao and others**⁴” while dealing with an application under Order VI Rule 17 of C.P.C., this Court held that "rejection of petition under Order VI Rule 17 of C.P.C. on the ground that proposed amendment is inconsistent with original plea and petitioner cannot be permitted to raise such inconsistent plea is not justified. Amendment of pleading cannot be rejected even if proposed amendment has effect of raising conflicting plea. It is for the plaintiff to justify his pleadings and prove the same with reference to evidence. Since the procedure being handmaid of justice, a party cannot be deprived of his right to raise pleadings by way of amendment unless proposed amendment results in failure of justice."

⁴ 2015 (1) ALT 113

In earlier judgment rendered in “**Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others**⁵” the Apex Court laid down certain guidelines for granting or denying relief under Order VI Rule 17 of C.P.C., viz; as follows:

"On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

- 1) Whether the amendment sought is imperative for proper and effective adjudication of the case?
- 2) Whether the application for amendment is bona fide or mala fide?
- 3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- 4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
- 5) Whether the proposed amendment constitutionally or fundamentally nature and character of the case? And
- 6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

In view of the guidelines laid down by the Apex Court, which are illustrative and not exhaustive, it is clear that while deciding the application for amendment ordinarily the court must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide and dishonest amendments. The purpose and object of Order VI

⁵ 2009 (8) SCJ 401

Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the courts while deciding such prayers should not adopt a hyper-technical approach. Liberal approach should be the general rule particularly, in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations. The Apex Court further held that amendment application to be filed if necessary immediately after filing suit i.e. before commencement of trial. If the petitioners are able to prove or explain as to how they failed to take steps before the trial commenced despite exercising due diligence, the Court can allow such amendment, if such application is filed after commencement of trial. The factum of exercising due diligence depends upon circumstances. In the present facts of the case, no fresh claim is made, the proposed amendment would not change the nature and character of the suit constitutionally or fundamentally and question of prejudice does not arise at this stage as the trial is not yet commenced and it is only explanatory in nature for deciding the real controversy between the parties. If the proposed amendment is tested with reference to the principles laid down in the above judgment, the amendment which is explanatory in nature can be permitted.

In “**Sajjan Kumar v. Ram Kishan**”⁶ the Apex Court held that “if the proposed amendment is necessary for the purpose of bringing to the fore the real question in controversy between the parties, refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff succeeding in the suit. Though the plaintiff ought to have been diligent in promptly seeking amendment in plaint at an early stage of suit, more so when error in question had been pointed out in written statement, amendment should have been allowed with imposition of costs.”

If the principle laid down in the above judgment is applied, leave cannot be declined at the pre-trial stage. In “**Rajesh Kumar Aggarwal and others v. K.K.Modi and others**”⁷ the Apex Court made it clear that merits of the proposed amendment cannot be gone into at the stage of allowing amendment and the object of the rule is that the Court should try merits of case before it and should consequently allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to other side.

Order VI Rule 17 of C.P.C. consists of two parts, namely; first part is discretionary and leaves it to the Court to

⁶ (2005) 13 SCC 89

⁷ AIR 2006 SC 1647

order amend pleadings and second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of deciding real controversy between the parties. The real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such amendment is necessary to decide the real dispute between the parties. If it is, amendment will be allowed and if it is not, amendment shall be refused. Even if the principle laid down in the above judgment is applied to the present facts of the case, the Court cannot negate the relief of amendment since the petitioners wanted to clean the dirt by brining certain facts to the notice of Court by amending plaint by filing petition under Order VI Rule 17 of C.P.C.

In any view of the matter, first part of Order VI Rule 17 of C.P.C. conferred discretionary power on the Court to order for amendment of pleadings. In the present facts of the case, due to non-disclosure of certain facts, the present petition was filed to disclose such facts, which allegedly not disclosed and such facts are within the knowledge of the respondents and would not accrue any valuable right to the respondents; in such case on the ground of taking away valuable right that accrued to the respondents, the petition cannot be dismissed. But the trial Court without discussing anything about the requirements under Order VI Rule 17 of C.P.C. either to allow

or dismiss the petition simply dismissed the petition without applying its mind.

In view of my foregoing discussion, I find that the order of the trial Court is erroneous since it failed to exercise discretion properly and such finding is liable to be set aside by exercising power under Article 227 of the Constitution of India.

In the result, the civil revision petition is allowed setting aside the order dated 06.01.2017 in I.A.No.1584 of 2016 in O.S.No.306 of 2016 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad, granting leave to the petitioners to insert paragraph No.21 in the plaint as claimed in I.A.No.1584 of 2016. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

04.08.2017
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