

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

CIVIL REVISION PETITION NO.3673 OF 2017

DATED:03-11-2017

Between:

Bhamidimarri Vijaya Lakshmi ... Petitioner

And

M. Uma Lakshmi ... Respondent

COUNSEL FOR THE PETITIONER: Mr. Muddu Vijai

COUNSEL FOR THE RESPONDENT: -



THE COURT MADE THE FOLLOWING:

JUDGMENT:

This civil revision petition arises out of order dt.21.06.2017 in I.A. No.10 of 2017 in O.S. No.1772 of 2011 on the file of the I Additional Senior Civil Judge, Visakhapatnam.

2. The petitioner filed the aforementioned suit for the following reliefs:

*“Therefore, the plaintiff humbly prays that the Honourable Court may be pleased to pass a decree and judgment in her favour and against the defendant for;*

- a) To direct the defendant to vacate the schedule premises and deliver vacant possession of the same to the plaintiff in good condition as was given to the defendant;*
- b) To direct the defendant to pay Rs.54,000/- (Rupees fifty four thousand only) towards damages for unauthorized use and occupation from January 2011 to September together with subsequent interest @ 24% p.a. from the date of suit till realization.*
- c) To direct the defendant to pay future damages at the rate of Rs.6,000/- per month from October 2011 till delivery of the schedule property;*
- d) For costs of the suit and*
- e) Such other relief or reliefs as the Honourable court may deem fit and proper under the circumstances of the case.”*

The petitioner has valued the suit for the purpose of court fee and jurisdiction, as under:

CF

*“1) For eviction of the defendant, the suit is valued on the basis of 1 year Rental value,*

*i.e., Rs.6,000/- x 12*

*: Rs.72,000-00*

*Court fee is paid under Sec. 40 of the A.P.C.F. and S.V. Act*

2) For damages at the rate of Rs.6,000/-  
per month from January 2011 to  
September 2011

Rs.6,000 x 9 months : Rs.54,000-00

Court fee is paid under section 20  
Art 1 (b) & (c) of Sch.I of A.P.C.F. and S.V. Act.”

3. After the case was reserved for judgment, and was subsequently reopened *suo motu* on the second occasion, the petitioner filed I.A. No.10 of 2017 under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) for permission to carry out amendments to paragraphs V and VI of the plaint, as under:

“Para No.V Amendemnts.

V. Value of the suit for the purpose of Court fee and jurisdiction is Rs.10,60,500/- and a Court fee of Rs.14,992/- is paid thereon under Section 29 and 20 read with Article 1(b) and (c) of the A.P.C.F. & S.V. Act, 1956.

#### DETAILS OF VALUATION

|                                        | Value     | Court Fee |
|----------------------------------------|-----------|-----------|
| (1) Value of the relief of Ejection    |           |           |
| Market Value of the suit schedule      |           |           |
| Property Flat No.1 in Ground Floor     |           |           |
| D.No.4-47-2/1 with a plinth area of    |           |           |
| 930 Sft., Sft. Cost Rs.1500/- per Sft. | 14,25,000 |           |
| 3/4 <sup>th</sup> thereof              | 10,06,500 | 12,526-00 |
| (2) Damages                            | 54,000    | 2,466-00  |
|                                        | -----     | -----     |
| TOTAL                                  | 10,60,500 | 14,992-00 |
|                                        | -----     | -----     |

Earlier the petitioner paid C.F. of Rs.5332/- the balance CF of Rs.9,660/- will be paid after allowing of this Application.

Para No.VI Amendments

VI. *The plaintiff therefore prays for a decree against the defendants for*

- a) Ejection of the Defendant and their men with all their bag and baggage from the suit schedule Flat and deliver vacant possession of the same to the Plaintiff.*
- b) Payment of Damages of Rs.54,000/-*
- c) Payment of Mesne profits by the Defendant from the date of their highhanded and unauthorized occupation, either to be ascertained by this Honourable Court in the suit or by appointment of an Advocate Commissioner.*
- d) Cost of this suit; and*
- e) Such other and further relief or reliefs as your Honourable Court may deem fit, proper and necessary in the circumstances of the case.”*

4. The respondent filed a counter affidavit wherein she has denied the ownership of the petitioner by taking the plea that the suit schedule property was purchased by her father-in-law, who is the husband of the petitioner, and kept ostensibly in the latter's name. It was further averred that though the said stand was clearly taken in the written statement, no steps were taken for amendment of the plaint till the trial was completed and that in the absence of any plea that in spite of due diligence the amendment could not be sought prior to the commencement of the trial, the application is liable to be dismissed as per the proviso to Order VI Rule 17 of CPC. A further plea was taken that the application for the amendment filed beyond three years from the date of filing of the suit is barred by limitation and that the proposed amendment changes the entire character of

the suit. By order dt.21.06.2017, the lower Court has dismissed the I.A.

5. During the hearing of the revision petition, this Court noticed the contents of paragraph -7 of the order under revision wherein it is stated that after completion of trial, the case was reserved for judgment on 26.09.2016, that later it was adjourned from time to time and again reopened on number of occasions and that thereafter the petitioner filed I.A. No.10 of 2017 on 23.12.2016. This Court therefore called for the docket proceedings in order to know the reasons for reopening of the suit. The docket proceedings have been accordingly sent. As this Court was unable to decipher the extremely unclear docket entries made in manuscript, the lower Court was directed to get the same typed. Accordingly, typed docket proceedings have been forwarded by the lower Court. Before dealing with this aspect, I would like to first consider the revision on merits.

6. A perusal of the order of the lower Court would reveal that it has dismissed the I.A. on three grounds, namely, 1) that the proposed amendment changes the character of the suit, 2) that the application for amendment having been filed six years after filing of the suit and after completion of the trial, the petitioner is not entitled to seek amendment having regard to



the provisions of Order VI Rule 17 of CPC, and 3) that the petitioner has not assigned any reason in support of the application for amendment.

7. On a comparison of the original prayer and the proposed prayer, I do not find any substantial difference as regards the main prayer, namely, recovery of possession, in their content, though there is a slight variation in form. Under paragraph VI (a) of the original prayer, the petitioner sought for a direction to the respondent to vacate the schedule premises and deliver vacant possession to her in good condition, while the proposed prayer under paragraph VI(a) is for ejection of the respondent and their men with all “their bag and baggage” from the suit schedule flat and deliver vacant possession of the same. Prayer (b) remained the same. Under prayer (c), the petitioner originally sought a direction to the defendant to pay future damages at the rate of Rs.6,000/- per month from October 2011 till delivery of the schedule property, whereas under the proposed amendment, prayer mesne profits for unauthorized occupation is sought. Unfortunately, the lower Court has straight away accepted the *ipse dixit* of the respondent and jumped to the conclusion that the proposed amendment changes the whole character of the suit. The lower Court has

not discussed as to how the character of the suit will change if the proposed amendment is accepted.

8. Be that as it may, the point that needs to be considered is whether the petitioner is entitled for amendment of the plaint. Under Order VI Rule 17 CPC, 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 proviso to the said Rule, however, bars such amendment after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. Under this provision, a party seeking amendment has to necessarily satisfy two requirements, namely, (i) that the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties and, (ii) if the trial has been commenced the party must satisfy the Court that in spite of his exercising due diligence he could not file an application for amendment before the commencement of the trial. The affidavit filed in support of I.A. No.10 of 2017 is silent on both the

aforementioned aspects. It is not explained therein as to how the proposed amendment is necessary for determining the real questions in controversy.

9. As regards the exercise of due diligence, all that the petitioner has stated in her affidavit is that originally, the suit was entrusted to a Senior Counsel and thereafter to one Mr. P. Ravi Kiran, that her counsel was elevated to a Judicial Post and that therefore she has entrusted the case to the present counsel. That at the time of institution of the suit, her counsel calculated the court fee under Section 40 of the A.P. Court Fees and Suits Valuation Act, 1956, instead of calculating the same under Section 29 and 20 of the said Act and that she was unaware of the legal proceedings and not conversant with the said Act and therefore she could not pay the court fee as per the Act in force in the State of Andhra Pradesh. She has further stated that at the time of presenting the written arguments his counsel observed the said mistake and filed the application. The affidavit did not explain the necessity of seeking amendment of the prayer in paragraph VI. As observed hereinbefore, except the form, the substance of paragraph VI of the proposed amendment is identical to that of the original prayer.



Therefore, I do not find any need whatsoever for the proposed amendment.

10. As for the valuation shown under paragraph V, the relief of eviction was valued on the basis of rental value for one year, while under the proposed amendment it was valued based on the market value. For seeking the amendment of relief of court fee, there is no whisper that despite exercise of due diligence the purported mistake was not detected. On the contrary, the docket proceedings show that on 4.8.2016 written arguments were filed on behalf of the petitioner and on 9.8.2016 written arguments were filed on behalf of the respondent. Reply arguments were filed on 6.9.2016, hearing was completed on that day and the suit was posted for judgment on 26.09.2016. Later, the case was adjourned to 30.09.2016, 14.10.2016, 28.10.2016, 28.10.2016 and 4.11.2016, on which date it was *suo motu* reopened and adjourned to 17.11.2016 for judgment. Again on 17.11.2016 the case was *suo motu* reopened for hearing and adjourned to 24.11.2016 for hearing. On 24.11.2016 and on 1.12.2016 the case was adjourned “at request” and on 14.12.2016 it was adjourned at the request of the counsel for the petitioner. It is only on 23.12.2016 that the petitioner has filed the aforementioned I.A. These facts would show that but

for the reopening of the suit for the second time, the petitioner would not have had an opportunity of filing the application for amendment. Apart from the fact that the pleading regarding the due diligence is totally absent, even the conduct of the petitioner does not show that she has exercised due diligence in filing the application for amendment. Therefore, I have no hesitation to hold that the petitioner has failed to satisfy the twin requirements of Order VI Rule 17 of CPC as indicated above. Though the lower Court has failed to assign sound reasons for dismissing the I.A., the conclusion arrived at by it and the result of the case, are nevertheless required to be upheld, albeit on the strength of my own reasons as assigned hereinbefore.

11. Before closing this case, it is necessary to observe that though the trial was effectively commenced on 27.1.2015 with the presence of P.W.1 in the Court, it took eighteen months for the Court to complete the trial. Even after the trial was closed and judgment was reserved on 6.9.2016, it was not delivered on five occasions on which the case was posted. On 4.11.2016 the case was *suo motu* reopened and no reasons were assigned therefor. The docket entry discloses that on the said date, the case was again heard and adjourned to 17.11.2016 for

judgment. On the said date, again the case was *suo motu* reopened and adjourned to 24.11.2016. The lower Court has failed to assign any reason for reopening the case *suo motu* for the second time also. This laxity on the part of the Court in delivering the judgment has given the scope for the petitioner to come out with an application for amendment as a result of which, the suit has been kept pending.

11. The manner in which the Court below has handled the case does not appear to be confined or peculiar to one particular Court. The practice of reserving the cases for judgment and reopening the same *suo motu* again and again appears to be prevalent in many Courts in both the States. To my mind, this is due to the failure of the Courts to make a proper planning of posting and disposal of cases. In this context, two pivotal provisions in the A.P. Civil Rules of Practice and Circular Orders, 1980 (hereinafter referred to as “the Rules”) need to be referred to and discussed. They are Rules 66 and 101.

12. Rule 66 of the Rules, which deals with preparation and publication of Special list, reads as under:

*“66. Preparation and publication of Special list:-*

- (1) *On completion of the preliminary stages of suit or other matter, the court shall obtain the required information from the*

- Advocates or parties to enable it to estimate the probable length of the hearing and then post in the hearing book to particular dates.*
- (2) *When the cases so posted are called on the dates, the Advocates or the parties shall report whether there is any case of compromise or death of parties and the like. Then a list known as the “Special List” of ready cases shall be prepared at the beginning of every month. For each day of the following month, postings shall be made with sufficient number of contested suits, uncontested suits and other matters that can be expected to be heard in a day. This “Special List” shall be published on the notice board of the court by the fifth day of each month. Between the fifth day and the tenth day any representation which the Advocates or the parties might have to make may be heard and necessary changes be made.*
- (3) *The final list for whole of the next month shall be published by the tenth of each month and thereafter, short of the death of parties or similar compelling reasons, no adjournments be granted.”*

Rule 101 of the Rules, with the heading “Application for directions” is as follows:

“101. *Application for directions:-*

*Any party may, at the first hearing, apply to the Court for directions or the court may, suo motu issue directions as to any of the following matters:*

- (1) *The filing of a written statement by any party, stating the pleas raised by him or further and better particulars thereof;*
- (2) *Adding or striking out parties;*
- (3) *Discovery of documents and interrogatories;*
- (4) *Inspection or production of any document or public record;*
- (5) *Issue of a commission to examine witnesses, or for any other purpose;*
- (6) *Reference to an arbitrator;*
- (7) *Any other matter or proceeding necessary to be considered or taken prior to the trial of the suit.*

*Unless the court otherwise orders, not less than three days notice of such application and of any affidavit filed in support thereof, shall be given by the applicant to the other parties to the suit.”*

The above reproduced Rules embody the principle of Case Management. If strict adherence to these Rules is made, the



Court can plan the disposal of cases in a time bound manner by avoiding needless adjournments. The Court can also prevent the spate of belated applications filed for reliefs, such as, reference of disputed documents to experts for their opinion, appointment of Advocates Commissioner for local inspections etc., which are causing enormous delays in disposal of the suits. Unfortunately, it does not appear that these two Rules are being followed by any Court.

13. In ***Rameshwari Devi v. Nirmala Devi***<sup>1</sup>, the Supreme Court suggested various measures for curbing delays in civil litigation. Some of the important measures suggested by it in paragraph 52 of the judgment are:

*“A. Pleadings are the foundation of the claims of parties. Civil litigation is largely based on documents. It is the bounden duty and obligation of the trial Judge to carefully scrutinize, check and verify the pleadings and the documents filed by the parties. This must be done immediately after civil suits are filed.*

*B. The court should resort to discovery and production of documents and interrogatories at the earliest according to the object of the Act. If this exercise is carefully carried out, it would focus the controversies involved in the case and help the court in arriving at the truth of the matter and doing substantial justice.*

... ..

*J. At the time of filing of the plaint, the trial Court should prepare complete schedule and fix dates for all the stages of the suit, right from filing of the written statement till pronouncement of the judgment and the courts should strictly adhere to the said dates and the said timetable as far as possible. If any interlocutory application is filed then the same be disposed of in between the said dates of hearings fixed in the said suit itself so that the date fixed for the main suit may not be disturbed.”*

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<sup>1</sup> (2011) 8 SCC 249



The directions in ‘B’ and ‘J’ in the judgment in ***Rameshwari Devi*** (1 supra) constitute the essence of Rules 66 and 101 of the Rules. While these Rules remain dead letters, the directions of the Apex Court in ***Rameshwari Devi*** (1 supra) appear to be followed more in breach.

14. As regards the time frame for delivery of judgments, Section 33 of the Code of Civil Procedure ordains that the Court, after the case has been heard, shall pronounce the judgment. Rule 142 of the Rules, reads as under:

*“142. Time for delivery of judgment:-*

- (1) *The Court, after case has been heard, shall pronounce judgment in an open Court, either at once, or as soon thereafter as may be practicable and when judgment is to be pronounced on some future day, and such day shall be within thirty days and it shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders.*
- (2) *The fair copy of the judgment required for the record in Court shall be prepared within five days of the date on which judgment is pronounced.”*

Under the above reproduced rule, after the case has been heard, the Court shall pronounce judgment in open Court either at once or as soon thereafter as may be practicable. If the judgment is to be pronounced on a future day, the same shall be done within thirty days and shall not ordinarily be a day beyond sixty days from the date on which the hearing of the

case was concluded. Being alive to the reality that the above Rule is invariably breached, this Court has issued Circular in ROC No.4001/OP CELL-E/2004, dt.30.8.2004, which reads as follows.

*“Certain instances have come to the notice of the High Court where the cases once posted for judgment are re-opened suo motu by the Presiding Officers thereby the decisions are getting delayed causing hardship to the parties and counsel.*

*While deprecating the said practice, the High Court hereby directs all the Presiding Officers in the State not to resort to such practice, and pronounce judgments, at once, and only in exceptional circumstances the cases are to be reopened.*

*In order to monitor the said issue at High Court level, all the Unit Heads are requested to furnish the consolidated data in the given proforma, relating to the cases that were re-opened together with the reasons, in brief, every month.*

PROFORMA

| SL. NO | NAME OF THE COURT | CASE NO. | DATE ON WHICH HEARING WAS CLOSED | DATE TO WHICH JUDGMENT IS POSTED | DATE ON WHICH THE CASE IS RE-OPENED | DATE ON WHICH JUDGMENT PRONOUNCED | REASONS IN BRIEF |
|--------|-------------------|----------|----------------------------------|----------------------------------|-------------------------------------|-----------------------------------|------------------|
|--------|-------------------|----------|----------------------------------|----------------------------------|-------------------------------------|-----------------------------------|------------------|

The High Court issued another Circular vide ROC. No.1708/2011-Vigilance Cell, dt.03.01.2012, reiterating the earlier Circular and directing all the Presiding Officers in the State to desist from the practice of reopening of matters which are reserved for judgment and that only in exceptional circumstances and for reasons to be recorded in writing, such cases may be reopened by giving advance notice to the concerned advocates, who are representing the parties. This was reiterated by another letter of the Registrar (Vigilance) vide

Roc.Lr. No.1997/2011-Vigilance Cell, dt.02.04.2012. The said Circulars and the letter notwithstanding, instances galore where the officers have been reserving the judgments and reopening the cases *suo motu* again and again.

15. Once the trial is completed and the judgment is reserved, it is wholly undesirable to reopen the case by the Court *suo motu*. This is a very unhealthy practice, which, apart from giving scope for unscrupulous parties to indulge in vexatious litigation by filing needless applications, as in the present case, also gives rise to speculation, often putting the credibility of the Judge at stake. By resorting to such practice, the Court creates a needless suspicion in the minds of the parties and gives scope for avoidable rumour mongering. In my opinion, till the arguments of both sides in all respects are completed and the Court gets clarity on all aspects from the counsel for both sides, it shall not reserve the case for judgment. Once the judgment is reserved, it must avoid reopening of the case *suo motu* as far as possible, except in exceptional circumstances. Even in such cases it cannot reopen the case without assigning proper reasons and without notice to both the parties. In all such events, the Court concerned must forthwith send the information to the unit heads who in turn must furnish

consolidated data in the proforma, as per the Circular in ROC.  
No.4001/OP CELL-E/2004, dt.30.08.2004.

16. The High Court on administrative side may ensure that Section 33 of CPC read with Rule 142, and Rules 66 and 101 of the A.P. Civil Rules of Practice and Circular Orders are scrupulously followed by issuing appropriate Circular(s).

17. Subject to the above observations, the civil revision petition is dismissed.

As a sequel to dismissal of the civil revision petition, C.R.P.M.P. No.4809 of 2017 shall stand disposed of as infructuous.

03-11-2017

*bnr*

*Note: LR copies to be marked.*

(B.O)

*bnr*



C.V. NAGARJUNA REDDY, J