

**THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

**CIVIL REVISION PETITION No.3658 of 2012**

**ORDER:**

The plaintiff in O.S.No.311 of 2008 on the file of the Court of I Additional Junior Civil Judge, Machilipatnam (for short, trial Court) is the petitioner in the present revision filed under Article 227 of the Constitution of India.

2. Heard learned counsel for the petitioner, learned counsel for the respondent and perused the material available on record.

3. The petitioner herein instituted the said suit as against the respondent herein for eviction from the suit schedule property, which is a building bearing door No.11/666, situated at Main Road, opposite: Krishna Kishore Talkies, Robertsonpet, Machilipatnam. The petitioner filed the said suit for eviction on the ground of wilful default in payment of rentals by the respondent herein. After the closure of the evidence on plaintiff's side, the petitioner herein filed I.A.No.322 of 2012 under the provisions of Order VI Rule 17 of the Code of Civil Procedure (for short, the Code), seeking permission of the trial Court to incorporate the additional ground of bonafide requirement also. The said application was resisted by the respondent by way of filing counter. The trial Court, by way of an order dated 03.07.2012, dismissed the said application.

This revision challenges the validity and legal sustainability of the said order.

4. According to the learned counsel for the petitioner, the impugned order is erroneous, contrary to law and is opposed to the provisions of Order VI Rule 17 of the Code. It is the further submission of the learned counsel that the trial Court did not properly appreciate the contents of the affidavit filed in support of the application and, had the same been done, the order impugned would not have emanated. It is further submitted that the trial Court proceeded on an incorrect premise that the petitioner herein was asking for amendment as to the nature of the lease. It is further submitted that the proposed amendment would not change the nature of the suit and the same, on the other hand, avoids the multiplication of litigation.

5. In the above backdrop, now the issue that emerges for the consideration of this Court is whether the order passed by the trial Court is sustainable and tenable or whether the same requires any interference of this Court under Article 227 of the Constitution of India.

6. There is absolutely no dispute with regard to the fact that after closure of the plaintiff's side evidence, the petitioner herein filed the present interlocutory application i.e., I.A.No.322 of 2012 under the provisions of Order VI Rule 17 of the Code obviously seeking incorporation of the ground of bonafide

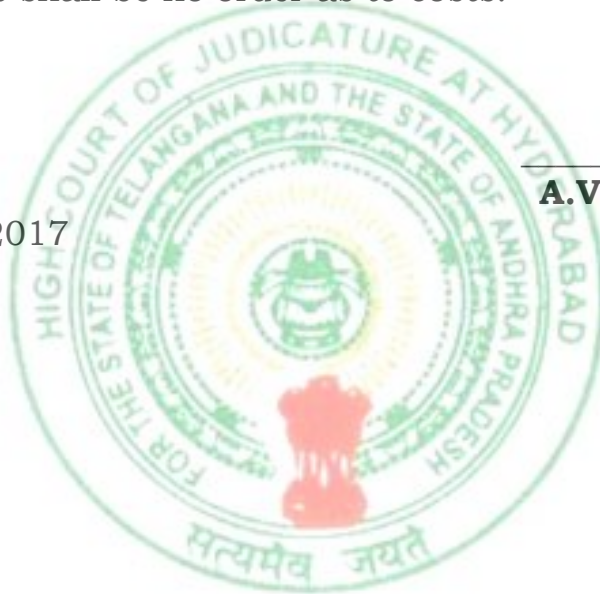
requirement as an additional ground. While asking the said amendment, in the affidavit filed in support of the application, the petitioner also stated about the nature of the lease on the ground that he found a document very recently. The trial Court went into the said aspect also and held against the petitioner. It is, in fact, in the application filed for amendment, the petitioner did not seek any amendment, touching the nature of the lease, but the fact remains that the trial Court also considered the same, as if the petitioner sought to introduce the same by way of proposed amendment. As per the proviso to Rule 17 of Order 6 of the Code, which came into effect from 01.07.2002, no application for amendment shall be allowed after 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 commencement of the trial.

7. In the instant case, admittedly the trial has commenced and, only after the closure of the evidence on plaintiff's side, the present application came to be filed. In the affidavit filed in support of the present application, the petitioner stated that in view of the change of traffic rules, the need to present premises arose and is a bonafide request. In the considered opinion of this Court, the said reason shown by the petitioner, now in the present suit which has been principally framed on the ground of wilful default, cannot be sustained. In fact, the trial Court on this aspect also recorded a categorical, cogent and valid reason

for turning down the request of the petitioner. It is a settled and well established principle of law that unless the order impugned suffers from inherent lack of jurisdiction and suffers from patent perversity, the invocation of the jurisdiction of this Court under Article 227 of the Constitution of India is impermissible. This Court does not find any such contingencies in the impugned order.

8. For the above said reasons, the civil revision petition is dismissed. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

Date: 14.09.2017  
TJMR



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**A.V. SESA SAI, J**