

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.4190 OF 2016

ORDER:

The order dated 22.06.2016, in E.A.No.326 of 2015 in E.P.No.107 of 2010 in O.S.No.764 of 1997, passed by the learned Senior Civil Judge, Gudur, is challenged before this Court.

The brief facts that led in filing of the present Civil Revision Petition are:-

The petitioner is the plaintiff in O.S.No.764 of 1997 on the file of VII Assistant Judge, City Civil Court, Chennai. The suit came to be decreed on 16.12.1998 for a sum of Rs.96,000/- together with interest and costs. The Execution Petition, bearing E.P.No.107 of 2010, was filed on the file of VII Assistant Judge, City Civil Court, Chennai, under Order XXI Rule 30 of C.P.C. claiming relief of arrest and detention of the JDr., in Civil prison for realisation of a sum of Rs.4,26,991-50 ps., and E.P. finally came to be transferred to Senior Civil Judge Court at Gudur for execution. It is the case of the petitioner-DHr., that as the JDr., failed to pay the decretal amount, in spite of having means to pay, he prayed for arrest and detention of the JDr., in Civil prison and, thereafter, having come to be aware of the respondent taking voluntary retirement and received about Rs.8,00,000/- under V.R.S. scheme, apart from drawing a sum of Rs.13,496/- per month from the Post Master, Gudur Head Post Office, Gudur, petitioner sought amendment to the E.P. by filing E.A.No.326 of 2015 invoking the provisions of Order VI Rule 17 read with 151 C.P.C. At the outset, it may be noted that the judgment and decree of the City Civil Court at Madras is dated 16.12.1998; E.P. No.107 of 2010 was filed some time in 2010, but within 12 years

from the date of passing of the decree and it is not in dispute that E.A.No.326 of 2015 was filed on 17.08.2016. However, the amendment petition was dismissed by the learned Senior Civil Judge at Gudur on the ground that if the amendment is allowed that would defeat the vested rights of JDr., on the aspect of limitation.

Sri K. Jayakumar, learned counsel for the petitioner submits that the issue involved in this case is squarely covered by a Full Bench judgment of this court in **Bhoganadham Seshiah v Budhi Veerabhadrayya (died) and others**¹. This Court had categorically held while Order VI Rule 17 of C.P.C does not apply to execution proceedings, but has wide powers under Sections 151 and 153 of C.P.C. in the matters relating to amendments and amendment application is maintainable. He further cited the judgment of the Supreme Court in **Pentapati China Venkanna and others v Pentapati Bangararaju and others**², which was relied on by the learned Senior Civil Judge, Gudur, was in fact considered by the Full Bench of this Court and the same was distinguished by the Court and as such the order of the learned Senior Civil Judge holding that the amendment petition is not maintainable, is unsustainable, as it is an amendment petition existing in the pending execution proceedings and limitation has no effect, and in that view of the matter learned Senior Civil Judge failed to exercise the jurisdiction vested in him; Learned Senior Civil Judge was not right in dismissing the E.A.

On the other hand, Sri M. Chalapati Rao, learned counsel appearing for the respondent-JDr by placing reliance on the

¹ AIR 1972 Andhra Pradesh 134 (V.59 C 31) (1)

² AIR 1964 Supreme Court 1454

judgment of the Supreme Court in **Pentapati China Venkanna case** (2 supra); **Mundlapati Peda Venkaiah v Kotha Guravaiah (died) and Others**³; **J. Rama v Vijaya Bank**⁴ would submit that the Courts have categorically held that Order VI Rule 17 has no application; and further the Full Bench Judgment of the Supreme Court in **Lalji Raja and Sons v Firm Hansrajnathuram**⁵ had categorically held that Order VI Rule 17 CPC has no application to the Execution Proceedings, which has been reiterated in subsequent judgments. Learned counsel for the respondent-JDr., further submit that the Full Bench Judgment of the High Court in **Bhoganadham Sessaiah case** (1 supra) is a judgment rendered without reference to the Larger Bench judgment of the Supreme Court in **Lalji Raja case** (5 supra); wherein the Supreme Court had held that the amendment petition filed beyond limitation period is time barred. He further contends that the application made by the petitioner-DHr is under Order VI Rule 17 CPC read with 151 CPC and the same is not an application made under Section 153 CPC and as such the very application itself is not maintainable. Even assuming that an application under section 153 is maintainable, the application under section 153 CPC does not over ride the statutory limitation prescribed, as the CPC is only procedural law, whereas, the Limitation Act is substantial law. As the relief that is sought in the EA being substantial relief, the maintainability of such application is required to be considered subject to the limitation period under Limitation Act. The E.P. is filed only for arrest and at the stage of argument the amendment has been

³ 2000 (3) ALT 431

⁴ 1996 AIHC 5678

⁵ AIR 1971 SC 974

sought and the amendment virtually being new relief the Court was right in coming to the conclusion that the same is barred by limitation, and the amendment cannot be ordered by making a reference to the Order XXI Rule 11A of CPC. He would further contend that in execution proceedings each of the reliefs is governed by independent provisions. Further, the Full Bench Judgment of the A.P. which is rendered in the context of Section 48 of CPC, which section is admittedly, omitted with effect from 01.01.1964 and the said judgment has not considered the effect of Article 136 of the Limitation Act, which in fact was considered by the judgment of the Karnataka High Court in **J. Rama case** (4 supra) and in that view of the matter, learned counsel submits that said judgments (2 to 4 supra) squarely apply to the facts in the present case.

Having carefully considered the arguments of the respective counsel and on a careful analysis of the judgments cited by the respective counsel.

The question which falls for consideration is “Whether the dismissal of the application filed by the petitioner is valid and legal on the ground that the same is filed after 12 years of the decree?”

Full Bench of this Court in **Bhoganadham Seshiah case** (1 supra) at para 74 had distinguished the judgment of the Supreme Court in **Pentapati China Venkanna case** (2 supra), on which reliance was placed by the learned Senior Civil Judge, which reads as under:

“74. Venkanna v. Banagararaju, AIR 1964 SC 1454 cannot be said to be taking a different view in regard to the question of amendment of execution petition after twelve years of the decree. In fact such a

question was not before the Supreme Court. The decision lays down what constitutes a fresh application and there can be little doubt about the import of the said term. That decision however, cannot be taken to be an authority for the proposition that under no circumstances the pending execution petition can be amended after, twelve years introducing a new relief.”

It may be further noticed from the said judgment at para 72, by making a reference to the observations made in previous para i.e., Para No.71, wherein the Court had taken a view that the executing court has no jurisdiction to allow execution against properties mentioned for the first time in a list filed 12 years after the date of passing of the decree, had expressed its disagreement with that view. Further, while disagreeing with the view expressed in **Jhorama v Latchanna Dora**⁶ had categorically held that the Court in fact had the jurisdiction to allow the amendment in a pending Execution Petition in cases of special circumstances. In **Bhoganadham Sessaiah case** (1 supra) at para 78, this Court held -

“It is enough to say that in our judgment those are special circumstances which can persuade any Court to allow amendment as in fact is done by the learned Judge. We do not think that the learned Judge has in any manner erred in principles in exercising his discretion to permit amendment even beyond twelve years of the decree. Any other view would only mean effecting injustice and allowing the judgment-debtor to take unfair advantage and deprive the decree-holder of his legitimate claim.”

⁶ AIR 1940 Madras 19 (V.27)

The Full Bench of this Court also had categorically held that such power of amendment is traceable to Section 153 of CPC, which reads as under-

“46. It was not doubted that execution of a decree is a proceeding in a suit and consequently Section 153, Civil P.C. would apply to such execution proceedings. There is abundant authority to hold that Section 153, Civil P.C. is applicable to execution proceedings.

47. In its general acceptation ‘proceeding’ means the form in which actions are to be brought and defended, the manner of intervening in suits, of conducting them, the mode of deciding them, of opposing judgments and of executing.

48. Likewise the term ‘suit’ is a very comprehensive one and is said to apply to any proceeding in a court of justice by which an individual pursues that remedy which the law affords him. The modes of proceeding may be various but if the right is litigated between the parties in the court of justice, it would be a proceeding in a suit.

49. Thus both the terms ‘proceeding’ as well as ‘suit’ are of wide amplitude and between them cover even the execution petitions. The principles laid down in the following cases therefore will apply to this case also. See Muhammad Habibullah v. Tikam Chand, AIR 1925 All 276; Bhulji Bechar v. Bawaji Daji, (1881) ILR 5 Bom 448 and Gokul Kristo Chunder v. Aukil Chunder Chatterjee, (1889) ILR 16 Cal 457.

50. The principles on which the power to amend should be exercised by now are fairly well settled. The principles underlying Order VI, Rule 17, Civil P.C. are substantially the same as underlying Section 153, Civil P.C. The width and the amplitude of this power is well illustrated in L.J. Leach and Co. Ltd. V. Jardine Skinner and Co., AIR 1957 SC 357; P.H. Patil v. K.S. Patil, AIR 1957 SC 363 and A.K. Gupta and Sons v. Damodar Valley Corporation, AIR 1967 SC 96.

51. One class of cases in which it is quite often pointed out that amendment might work injustice to the other side is where it takes away from that party a right accrued to him by expiration of certain time. In such class of cases it is now thoroughly well established that ordinarily a decree-holder will not be allowed to amend his execution petition by including a new relief which since the date of the decree has become barred by the provisions prescribing limitation.

52. There is no reason to make any distinction between cases to which Section 48, Civil P.C. or Article 182 applies on the one hand and the cases covered by Section 3 of the Indian Limitation Act read with relevant entries in the schedule to the Indian Limitation Act. @ Page-AP 143. It is a mistake to think that Section 48 Civil P.C., lays down any inflexible rule in not allowing any amendment whatever may be the circumstances of the case, to the execution petition merely on the ground that if permitted it would be contrary to Section 48, Civil P.C. or Article 182 of the Limitation Act. The same argument can relevantly be raised in regard to suits in which amendment is sought, and is quite often so raised. The two situations therefore are similar and not different in so far as the principle underlying the amendment is concerned. In either case the amendment would not normally be allowed if the effect of the amendment is to deprive the other side of a valuable right to plead limitation. Nevertheless there can be exceptional cases where special circumstances demand that in order to do substantial justice between the parties and with a view to settle all disputes necessary for the effective disposal of the cases amendment may be allowed.

In para 52 of the said judgment the Full Bench further held as follows:

“The rule therefore that ordinarily in such cases amendment should not be allowed is not a universal

rule and in peculiar or special circumstances as amendment may be allowed even where it has the effect of depriving the other side of his right to plead limitation. What follows is that the question of limitation is one of the factors to be taken into count in the exercise of the Court's discretion as to whether the amendment should be allowed. It would be erroneous to confuse this discretion of the court with its power to permit amendment. It does not affect the power of the Court to order amendment, if that is required in the interests of justice."

So far as the judgments of the learned single Judge in **Mundlapati Peda Venkaiah case** (3 supra) referred to by **Pola Vishwanadham and others v Kalyani Agencies, Warangal**⁷ are only in relation to Order VI Rule 17 holding that an amendment in execution petition is impermissible. However, in both the judgments, the judgment of the Full Bench was not referred to, wherein the Full Bench had opined that the amendment is permissible in view of Section 153 of CPC. So far as the issue relating to limitation is concerned, the judgment of the Supreme Court in **Lalji Raja and Sons case** (5 supra), on which reliance has been placed by the learned counsel for the respondent, it may be noted that the Supreme Court had held that Section 48 of CPC to be construed as prescribing a limitation. It is not in dispute that Section 48 of CPC stands omitted with effect from 01.01.1964. It may be noted that the Full Bench judgment of this Court reported in **Bhoganadham Sessaiah case** (1 supra) is dated 30.01.1968, therefore, it cannot be argued that the Full Bench was not conscious of the omission of Section 48 of CPC.

⁷ 2005 (2) ALD 64

It is not in dispute that originally the Execution Petition is of the year 2010, whereunder petitioner sought to execute decree by seeking arrest of the JDr. In the process of enquiry, the burden lies on the DHr., that the JDr., in spite of having means not honouring the judgment and decree. In that context the amendment, which is sought by the petitioner can only be construed to be a relief in the aid of seeking execution of the decree. Further, as held by the Full Bench of this Court in **Bhoganadham Seshaiiah case** (1 supra), in special circumstances such amendment could be allowed even beyond 12 years of decree. It may be borne in mind that it would be the duty of the Court to ensure, as far as possible, the judgments and decrees of the Court are honoured. In those circumstances, the impugned order being contrary to the law declared by the Full Bench judgment of this Court in **Bhoganadham Seshaiiah case** (1 supra), the same is erroneous and dismissing the E.A. is liable to be set aside.

Accordingly, the C.R.P. is allowed setting aside the order dated 22.06.2016, in E.A.No.326 of 2015 in E.P.No.107 of 2010 in O.S.No.764 of 1997 passed by the learned Senior Civil Judge, Gudur. There shall be no order as to costs.

Miscellaneous Petitions pending, if any, in this Civil Revision Petition shall stand closed.

CHALLA KODANDA RAM, J

Date:13.04.2017.
Ssv