

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 2884 OF 2017

ORDER:

This civil revision petition under Article 227 of the Constitution of India is filed challenging the order dated 01-06-2017 in I.A.No. 577 of 2016 in O.S.No. 691 of 2005 on the file of the Court of XIX Additional Senior Civil Judge, City Civil Court, Secunderabad (for short, 'the Court below'), whereby the Court below dismissed the application of the petitioner herein filed under Order VI Rule 17 of the Code of Civil Procedure (for short, 'C.P.C.').

The petitioner filed O.S.No. 691 of 2005 on the file of the Court below for perpetual injunction restraining the respondents herein from demolishing the construction in the schedule premises on various grounds and the written statement was filed on 01-02-2010 by the respondents. In the written statement, the respondents raised a specific plea that notice dated 20-12-2007 under Section 248 (1) of the Cantonment Act (for short, 'the Act') was served on the petitioner demanding her to stop construction and remove the same within 30 days from the date of receipt of the said notice but the petitioner neither stopped construction nor submitted any explanation. Therefore, respondent No. 2 was constrained to issue an identical notice dated 07-03-2008 under Section 320 of the Act. As the petitioner was not allegedly served with any of such notices, she did not raise any plea in the plaint initially and even those notices along with proof of service were not filed along with the written statement. However, those documents were filed in I.A.No. 162 of 2016 on 28-03-2016 and the same were received by the Court below by exercising power under Order VIII Rule 1-A (3) of C.P.C. and got marked as Exs.B22, 25 and 26 on behalf of the respondents. Since those documents were not filed along with the written statement, the petitioner could not take steps to amend the plaint suitably. The petitioner came

up with the present petition before the Court below in the month of December, 2016, *i.e.* nine months after the documents were received by the Court below explaining the reasons. The petitioner explained the reason for her failure to take steps immediately after filing written statement to amend the plaint and sought leave of the Court below to permit the petitioner to amend the plaint as prayed in the petition.

The respondents filed counter denying material allegations *inter alia* contending that the petitioner is not entitled to claim relief in the present petition in view of proviso to Order VI Rule 17 of C.P.C. as amended by Act 22 of 2002 and therefore the petitioner is not entitled to get the plaint amended. It is further contended that the suit is now at the stage of argument and at this belated stage, amendment cannot be allowed and prayed for dismissal of the petition.

The Court below by its order dated 01-06-2017 dismissed the application on the ground that the petition is belated one and such amendment cannot be permitted after commencement of trial in view of interdict under proviso to Order VI Rule 17 of C.P.C.

Aggrieved by the order passed by the Court below, the present revision is filed mainly on the ground that the alleged issuance of notices is subsequent to filing of the suit as pleaded in para No. 7 of the written statement of defendant No. 2 *i.e.* on 20-12-2007 and 07-03-2008. Therefore, the petitioner could not take steps to challenge those notices by claiming appropriate relief in the plaint. The Court below did not consider this aspect in proper perspective and committed an error and prayed to allow the revision petition setting aside the order under challenge.

During hearing, learned counsel for the petitioner in support of his contention; that the alleged service of notices is a subsequent event and due to

subsequent events, plaint can be amended suitably; placed reliance on ***Rajesh Kumar Aggarwal and others Vs. K.K.Modi and others***¹; and ***Abdul Rehman and another Vs. Mohd. Ruldu and others***².

Whereas learned counsel for the respondents, while supporting the impugned order, highlighted as to how the petitioner prosecuted proceedings since 1996 by filing one suit or other and also contended that though the suit was filed in the year 2005, the petitioner did not raise her little finger to take steps to amend the plaint but at the fog end of trial, the petitioner filed this petition to amend the plaint only to drag the proceedings for some more time. Apart from that, in view of interdict to proviso to Order VI Rule 17 of C.P.C., the present amendment cannot be allowed as the petitioner did not explain the reason for her failure to take steps and placed reliance on ***Alkapuri Co-operative Housing Society Limited Vs. Jayantibhai Naginbhai (Deceased) through L.Rs.***³; and ***Rahimmunnisa Begum and others Vs. Mohd. Mohammadulla Khan Durrani (died) by L.Rs. and others***⁴ in support of his contention.

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

"Whether the interdict contained in the proviso to Order VI Rule 17 of C.P.C. as introduced by Act 22 of 2002 is a bar to grant relief in the present petition, if not, whether the delay is a ground to reject the prayer for amendment under Order VI Rule 17 of C.P.C., if so, whether the order passed by the Court below be sustained?"

Admittedly, the suit is filed for injunction simplicitor restraining the respondents from interfering with the construction in the year 2005. More

¹ (2006) 4 SCC 385

² (2012) 11 SCC 341

³ AIR 2009 SC 1948

⁴ 2004 (2) ALD 511

curiously, the defendants in the suit filed their written statement on 01-02-2010 *i.e.* almost after lapse of five years from the date of filing the suit but before filing written statement, it appears that the defendants filed a petition under Order VII Rule 11 of C.P.C. to reject the plaint which was dismissed by the Court below after recording reasons. Obviously for different reasons, the respondents allegedly served notice dated 20-12-2007 under Section 248 (1) of the Act calling upon the petitioner and one Padma Reddy to stop construction and remove illegal constructions within 30 days from the date of receipt of notice. Since there was no response, the respondents allegedly issued another notice dated 07-03-2008 under Section 320 of the Act but none of the allegations made in the written statement disclosed the date of service of notice or whether or not the notices were served. When the respondents relied on those two notices, they are required to annex list of documents under Order VIII Rule 1-A (1) of C.P.C. and if those documents are not available with the respondents, they must state in whose possession they are as required under Order VIII Rule 1-A (2) of C.P.C. but the respondents neither complied with either Rule 1-A (1) or 1-A (2) of C.P.C. nor filed application under Rule 1-A (3) of Order VIII of C.P.C. immediately. In such case, it is difficult to impute knowledge about issue and service of notices during pendency of the suit. The alleged service of notices under the Act is a subsequent event during pendency of the suit and such subsequent event is relevant for deciding the real controversy. The plaintiff can file an application to amend plaint under Order VI Rule 17 of C.P.C. since amendment is only the remedy available to bring those facts in pleadings. Therefore, based on subsequent event, plaint can be amended and the same principle is laid down by the Apex Court in **Rajesh Kumar Aggarwal** (1st *supra*). In para No. 17 of the judgment, the Apex Court made it clear that since cause of action arose during pendency of the suit, proposed amendment ought to have been granted because

the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. Therefore, the law declared in the above judgment is directly applicable to the present facts of the case. It is also contended that if the amendment is necessary to sub-serve the ultimate cause of justice, such amendment can be allowed and placed reliance on **Abdul Rehman** (2nd *supra*), wherein the Apex relied on **Pankaja Vs. Yellapa** to hold that if granting of an amendment really sub-serves the ultimate cause of justice and avoids further litigation, the same should be allowed. Basing on these two principles, it is contended that amendment is the only source to bring subsequent events on record.

The main endeavour of learned counsel for respondent No. 2 is that on account of introduction of amendment, the petitioner is claiming relief against the appellate authority also and therefore, the relief proposed to be introduced by way of amendment cannot be granted in view of the bar under the provisions of the Act.

This Court cannot decide merits of the proposed amendment while deciding an application under Order VI Rule 17 of C.P.C. In **A.Krishna Rao Vs. A.Narahari Rao and others**⁵, this Court while dealing with an application under Order VI Rule 17 of C.P.C. 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 conflict in 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."

⁵ 2015 (1) ALT 113

In view of the law declared by this Court in the above judgment, this Court cannot examine merits of the proposed amendment while deciding an application under Order VI Rule 17 of C.P.C. Therefore, I find no substance in the contention raised by learned counsel for the respondents as to the merits of the proposed amendment.

The main ground urged before this Court by learned counsel for the respondents is that in view of the interdict under proviso to Order VI Rule 17 of C.P.C., unless the petitioner establishes that despite due diligence he could not bring those facts to the notice of the Court, amendment cannot be permitted. No doubt by introducing proviso to Order VI Rule 17 of C.P.C., the statute restricted the powers of the Court to exercise discretion in allowing petitions in a routine manner but that does not mean that petitions filed under Order VI Rule 17 of C.P.C. cannot be allowed at all. In the present facts of the case, the written statement was filed after five years from the date of filing suit without disclosing any details as to service of notices, annexing copies of notices and acknowledgements in receipt of notices as required under Order VIII Rule 1-A of C.P.C. On the other hand, for the first time, the respondents produced those documents along with I.A.No. 162 of 2016 on 28-03-2016 *i.e.* almost after eleven years from the date of filing suit. Till production of those documents before the Court below, the petitioner is not aware of issue and service of notices. Thereafter, the petitioner filed an appeal before the appellate authority as permitted by the Act and it is pending. During pendency of the appeal, the present petition is filed immediately after the appeal. Therefore, the bar under the proviso to Order VI Rule 17 of C.P.C. is not applicable since the petitioner is able to satisfy the Court that she exercised due diligence immediately on coming to know about issuance of notices on their production before the Court below in I.A.No. 162 of 2016 on 28-03-2016 and therefore filed the present petition.

Learned counsel for the respondents in support of his contentions placed reliance on **Rahimmunnisa Begum** (4th *supra*), wherein this Court in para No. 27 of the judgment held that in view of proviso to Order VI Rule 17 of C.P.C., no application for amendment of pleadings shall be allowed after trial has commenced but this Court did not deal with the rider clause annexed to it *i.e.* proof of exercise of due diligence. In the peculiar circumstances of the present case, the principle laid down in the above judgment cannot be applied. Learned counsel for the respondents also drawn the attention of this Court to **Alkapuri Co-operative Housing Society Limited** (3rd *supra*), wherein the Apex Court in para No. 15 observed as follows:

"It is neither in doubt nor in dispute that the Court's jurisdiction to consider an application for amendment of pleading is wide in nature, but, when, by reason of an amendment, a third party is sought to be impleaded not only the provisions of Order VI Rule 17 of C.P.C. but also the provisions of Order I Rule 10 of C.P.C. would come into play. When a new party is sought to be added, keeping in view the provisions of sub-rule (5) of Rule 10 of Order I of C.P.C., the question of invoking the period of limitation would come in."

The principle laid down in the above judgment is of no assistance to the respondents. On the strength of principles laid down in the above judgments, it is difficult to negate the relief claimed in the petition. In the later judgments in **Delhi Development Authority Vs. S.S.Aggarwal and others**⁶; **Chander Kanta Bansal Vs. Rajinder Singh Anand**⁷; and **Rameshkumar Agarwal Vs. Rajmala Exports Private Limited and others**⁸, the Apex Court dealt with the scope of Order VI Rule 17 of C.P.C. in detail. In **Rameshkumar Agarwal** (8th *supra*), the Apex Court reiterated the principle laid down in **Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others**⁹, wherein the Apex

⁶ 2011 (6) SCJ 496

⁷ 2008 (6) SCJ 440

⁸ 2012 (4) SCJ 724

⁹ 2009 (8) SCJ 401

Court laid down the following six guidelines to consider an application under Order VI Rule 17 of C.P.C.:

"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.*

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only 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 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. In view of the law declared by the Apex Court, no prejudice would be caused to the respondents even if it is allowed. On the other hand, it would put an end to multiplicity of proceedings.

Learned counsel for the respondents finally contended that it is belated and in case the petition is allowed, disposal of the suit will be delayed for some more time. This contention cannot be accepted for the reason that Order VI Rule 17 of C.P.C. permits parties to amend their pleadings at any time during pendency of suit or proceedings. Therefore, delay alone is not a ground to reject amendment under Order VI Rule 17 of C.P.C. However, in view of long pending litigation in two rounds, I find that it is a fit case to issue necessary direction to the Court below, while allowing this application granting leave to the petitioner to amend the plaint, to decide the suit within six months from the date of receipt of a copy of this order after affording opportunity to file subsequent pleadings under Order VIII Rule 9 of C.P.C. and affording reasonable opportunity to both parties to adduce any evidence only regarding subsequent pleadings.

With the above direction, the civil revision petition is allowed. Pending miscellaneous petitions, if any, shall stand closed in consequence. No costs.

M.SATYANARAYANA MURTHY, J.

Date: 30-06-2017.

JSK