

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.2138 of 2016

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dated 19.02.2016 in I.A.No.178 of 2016 in O.S.No.223 of 2005 passed by the Principal District Judge, Ranga Reddy District at L.B.Nagar, dismissing the petition filed under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure (for short 'C.P.C.') on the ground that the trial in the matter was commenced and the amendment sought only after commencement of trial, and the said amendment cannot be permitted in view of the judgment in **Kailash v Nanhku and others**¹.

The respondent filed suit for recovery of Rs.1,50,00,000/- based on the Development Agreement making all the defendants jointly and severally liable to pay the said amount together with interest at 18% per annum.

It is the case of the petitioner that a document was introduced in the evidence i.e., an endorsement made on the reverse of the Development Agreement dated 15.07.1994. The said endorsement is dated 15.07.1979, which does not bear the signature of the petitioner allegedly. Photostat copies of the endorsement was served on the petitioner, the same does not disclose the signature of the petitioner and thereby, the petitioner could not deny making the said endorsement. Now the petitioner sought amendment of the written statement under Order 6 Rule 17 of C.P.C.

The respondent denied various contentions raised in the affidavit, while relying on the proviso to Order 6 Rule 17 of C.P.C., which prohibits permitting amendments after commencement of trial unless the

¹ 2005(3) SCJ 503

petitioner could not bring those facts despite exercise of due diligence. Accordingly, following the decision in **Kailash's** supra, the trial Court dismissed the petition.

During hearing, learned counsel for the petitioner, while reiterating the contentions, requested this Court to permit him to amend his written statement as the respondent denying the endorsement, dated 15.07.1997, which does not bear his signature.

As seen from the contents of the plaint, there is no reference in the entire body of the plaint, including cause of action, about the endorsement dated 15.07.1997. The said endorsement was not relied upon by the plaintiff to claim relief and mere producing the document and marking the same would not serve any purpose in the absence of any pleading. When there is no factual foundation in the plaint about the endorsement, the petitioner is not required to deny the specific endorsement by filing a written statement. Therefore, the proposed amendment is unnecessary. Further, if the plaint is amended at any stage, the petitioner is entitled to file additional written statement, but he is not required to amend his written statement when there is no pleading with regard to the endorsement, which the petitioner is disputing. Hence, I find no ground to interfere with the order passed by the trial Court and therefore the Revision Petition is liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed. No costs.

Miscellaneous petitions, if any, pending in the petition, shall stand closed.

M. SATYANARAYANA MURTHY J

Date: 23.06.2017
kvrn