

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.6052 OF 2016

ORDER:

This petition is filed under Section 115 of C.P.C, challenging the order in I.A.No.26 of 2016 in A.S.No.53 of 2014 dated 21.10.2016, passed by the Principal District Judge, Ananthapuramu, dismissing the petition filed under Order VI Rule 17 C.P.C filed by the petitioner.

The petitioner filed suit for specific performance of agreement to sell against defendants 1 to 3 impleading defendants 4 & 5, the subsequent purchasers, prior to institution of the suit, but claimed relief only against defendants 1 to 3, the vendors of the petitioner i.e. the legal representatives of the original vendor under the agreement of sale without claiming any relief to join the defendants 4 & 5 along with defendants 1 to 3 in execution of the registered sale deed in terms of the agreement. The parties went on trial and the suit was decreed in part, granting relief against respondents 1 to 3, while holding that the petitioner is entitled for specific performance of the agreement of sale and respondents 4 & 5 are the bonafide purchasers for valuable consideration and they are entitled to protect their right in property which they purchased.

Aggrieved by the decree and judgment, the appellants in A.S.No.53 of 2014, filed I.A.No.26 of 2016 in the month of April, 2016 seeking amendment of the plaint to claim relief against respondents 4 & 5 and claimed decree against respondents 4 & 5.

The 4th respondent filed counter affidavit, denying material allegations while contending that the petitioner slept over for a long period and the proposed amendment, he takes away the valuable right that accrued to the respondents and prayed for dismissal of the petition.

According to Order VI Rule 17, 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 and if the Court is satisfied that it is just and necessary. But, a rider is annexed to Act 22 of 2002 with effect from 01.07.2002 which created interdict to exercise power in permitting the parties to amend their respective pleadings. The proviso is extracted hereunder:

“Provided that no application for amendment shall be allowed 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 trial.”

Therefore, a pre-trial amendment can be allowed, but, so far as allowing post commencement of trials are concerned, the petitioner has to satisfy the Court that the petitioner could not raised the matter before the Court, inspite of the exercise of due diligence. The burden is upon the petitioner to prove that he exercised due diligence, but here, there is no whisper in the entire affidavit that he exercised due diligence and inspite of it, he could not have raised the matter before the Court.

The present petition is filed seeking amendment after disposal of the suit and the appeal was filed in the year 2014, whereas, the amendment application was filed in the year 2016. This itself indicates that the petitioner did not exercise due diligence in prosecuting proceedings. On the other hand, no explanation was offered in the entire affidavit regarding exercise of due diligence. Therefore, in view of the interdict contained in the proviso to Order VI Rule 17 C.P.C, when the petitioner did not satisfy the Court about his failure to bring those facts before the Court, despite exercise of due diligence, dismissal of the petition by the Trial Court is in accordance with law.

The words “due diligence” is not exactly defined in the Code, but in “***Bharat Petroleum Corporation Ltd. v. Precious Finance Investment Pvt. Ltd***¹”

“The Dictionary meaning of the expression “due diligence” as given in the Blacks Law Dictionary, Sixth Edition, 1990 means “Such a measure of prudence, activity or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case.” Similarly the Law Lexicon by P. Ramanatha Aiyer, Second Edition (Reprint) 2001 explains “due diligence” to mean such watchful caution and foresight as the circumstances of the particular case demands. While examining the explanation offered or cause shown as to why in spite of due diligence a party could not have raised the matter before commencement of trial, the Court may have to see the circumstances in which the party is seeking amendment. In short the explanation as to “due diligence” depends upon the particular circumstances and the relative facts of each case to reach a conclusion one way or the other.”

¹ 2006 (6) BomCR 510

In “**Chander Kanta Bansal v. Rajinder Singh Anand**²” the Apex Court while deciding a matter pertaining to amendment of pleadings under Order VI Rule 17 of C.P.C. discussed about the word “due diligence” in paragraph No.16 as follows:

“The words “*due diligence*” has not been defined in the Code. According to Oxford Dictionary (Edition 2006), the word “diligence” means careful and persistent application or effort. “Diligent” means careful and steady in application to one's work and duties, showing care and effort. As per *Black's Law Dictionary (Eighth Edition)*, “*diligence*” means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. “*Due diligence*” means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to *Words and Phrases by Drain-Dyspnea (Permanent Edition 13A)* “*due diligence*”, in law, means doing everything reasonable, not everything possible. “*Due diligence*” means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs.”

In view of the definition of ‘due diligence’ referred supra in the judgment of Bombay High Court and Apex Court, to claim relief of amendment, the petitioner has to prove that he has acted as an ordinary reasonable prudent man and it is a question of fact. It is for him to explain the reason for failure to take steps earlier. There is nothing on record to prove that the petitioner has exercised due diligence throughout the trial before the Court or atleast after filing of appeal, till the date of filing of the present petition i.e. almost after two years. Therefore, the order passed I.A.No.26 of 2016 in A.S.No.53 of 2014 dated 21.10.2016, passed by the Principal District Judge, Ananthapuramu cannot be found

² (2008) 5 Supreme Court Cases 117

fault, as the Court exercised its discretion, keeping in mind the bar under proviso to Order VI Rule 17 C.P.C, thereby, the petition is devoid of merits and it deserves to be dismissed.

In the result, the civil revision petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:14.06.2017

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