

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2799 of 2016

ORDER:

This revision under Article 227 of the Constitution of India is filed assailing the order in I.A.No.411 of 2014 in O.S.No.39 of 2011 dated 30.04.2015 passed by the Judge, Family Court cum Additional District Judge, Karimnagar district at Karimnagar, allowing the application filed under Order VI Rule 17 of CPC in part granting leave to amend the plaint to claim alternative relief of refund of advance consideration paid, while declining to delete certain words regarding delivery of possession. Aggrieved by refusal to amend the plaint to delete certain words mentioned in the petition, the present revision is filed.

2. In the present revision, the main contention of the learned counsel for the petitioner is that the petitioner(plaintiff) made an allegation that the possession of the property was delivered but in fact it was not delivered and it is in the possession of the bank since bank initiated proceedings under SARFAESI Act by issuing notice under Section 13(2) and took possession of the property, therefore, they were not in possession of the property and prayed to grant leave to amend the plaint as mentioned in paras 1, 2 and 3 of the petition (the proposed amendment).

3. The suit was filed for specific performance of contract of sale and in para No.3 of the plaint, the plaintiff-petitioner admitted about delivery of possession by contending that she is in peaceful possession and enjoyment of the same, but now the plaintiff wanted to withdraw the admission she made in pleading, i.e. plaint. But, the trial Court dismissed the petition on the ground that to overcome the difficulty in payment of stamp duty and penalty under Article 47-A of Schedule 1-A of the Stamp Act, the petition before the trial Court came to be filed and thereby such amendment cannot be allowed.

4. During hearing, learned counsel for the petitioner contended that the Court may grant leave to amend the plaint at any stage of the proceedings, if, such amendment is necessary for decision in the main suit and the bar under proviso to Order VI Rule 17 of CPC has no application to the present facts of the case, therefore, prayed to set aside the order to the extent of its disallowing amendment in paras 3 and 9 of the plaint as claimed in the petition, whereas, the counsel for the respondent supported the order of the trial Court in all respects.

5. An amendment can be allowed at any stage of the proceedings. But such amendment shall not alter or change the nature of cause of action or withdraw any unequivocal admission made by the parties or to take away the valuable

right that accrued to the respondent. Therefore, while deciding an application for amendment, the Court has to consider whether the proposed amendment would take away the admission if any made by the petitioner. In **Revajeetu Builders and Developers v. Narayanaswamy & Sons and others**¹, **Rameshkumar Agarwal v. Rajmala Exports Pvt. Ltd and ors**² the Apex Court laid down the principles to be followed for grant of leave in a petition filed under Order VI Rule 17. The principles laid down in **Revajuthu Builders and others(supra)** are reiterated in **Ramesh Kumar Agarwal's** case and the principle laid down in both the judgments is as follows:

“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.

¹ 2009(8) SCJ 401

² AIR 2012 SUPREME COURT 1887

6. Keeping in mind the above guidelines, this Court has to decide whether the amendment is necessary for proper adjudication of the case, the suit or proceeding pending before the court and whether it is bona fide or mala fide, and so also not to cause any prejudice to the other side, which cannot be compensated adequately in terms of money, bar of limitation, change of the nature and character of the suit. In the present case, the petitioner made an unequivocal admission that the possession of property was delivered and there is a clear recital in the agreement of sale that the possession of property was delivered to the petitioner. But the petitioner sued up on such document, i.e. agreement of sale evidencing delivery of possession is liable to be stamped under Article 47-A of Schedule 1-A of A.P. Amendment to Indian Stamp Act. Now, the petitioner wanted to withdraw the admission to avoid payment of stamp duty and penalty on the agreement or contract of sale under Section 47-A of Schedule 1-A of Stamp Act as amended by A.P. When such admission is made, the proposed amendment cannot be said to be bonafide and it would amount to permitting the petitioner to withdraw an unequivocal admission to overcome the difficulty in payment of stamp duty and penalty on the agreement of sale/contract of sale which would seriously affect the revenue of the State. In such a case, the Court cannot permit the said amendment by exercising power under

Order VI Rule 17, since the power under Order VI Rule 17 is purely discretionary in nature. Therefore, I find no grounds to interfere with the findings recorded by the trial Court while exercising the power under Article 227 of the Constitution of India. Hence, the present petition is liable to be dismissed.

7. In the result, the revision petition is dismissed confirming the order passed by the trial Court in I.A.No.411 of 2014 in O.S.No.39 of 2011 dated 30.04.2015. No order as to costs.

Dt:28-07-2017,
Rns

M.SATYANARAYANA MURTHY, J

