IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

C.R.P. (PD) No. 34 of 2015
and
M.P. No. 1 of 2015

K.M.Krishnan ...Petitioner

vs

1. M.Chandrasekaran
2. M.Samraj
3. S.G.Moongappan
4. Mathiazhagan
5. Krishnan
6. Rajamanickam
7. Samudi
8. Sekar @ Settu
9. Selvaraj
10. Tamilselvan
11. Sekar
12. Rajendra
13. Muniappan
14. Veerabandran
15. Nanjappan

16. Beeran
17. Madhammal
18. Soodappan
19. Amasi (died)
20. Nanjappan
21. Panchiyammal
22. Chennammal
23. R.Shankar
24. K.Kodhandam
25. Rani
26. Barath Educationl Trust
    Rep. by Administrative Officer,
    Rani, w/o. B.Baskaran
    No.1/215-8, 3rd Cross, Rajaji Nagar,
    Krishnagiri Town.
27. S.Ashokji
28. K.P.Nagarajan
29. Rani
30. Lakshmi
31. Valli ...Respondents

__Prayer:__ Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 10.11.2014 passed in I.A.No.122 of 2014 in O.S.No.61 of 2010 on the file of the Principal District Court, Krishnagiri.

For Petitioner : Mr.P.Mani

For Respondents : Mr.V.Nicholas for R1 to R23 and R27, R28
No Appearance for R24, 25, 26 and 29 to 31

ORDER

In a suit for specific performance filed by the petitioner herein, he had taken out an application seeking for amending the plaint by introducing an alternative relief for refund of the sale advance amount. The said application came to be dismissed on the main ground that, such a plea is barred by limitation. Challenging the same, the present revision petition has been filed.

2. The proviso to Section 22(2) of the Specific Relief Act, 1963 empowers the Court to entertain an application for amendment of the plaint seeking for alternative relief for refund of the advance amount at any stage of the proceedings.

3. It is the submission of the learned counsel for the petitioner that the phrase "at any stage of the proceedings" would entitle the petitioner to file an application, even after the period of limitation of three years and in support of such a submission, the learned counsel would rely upon the

decisions of this Court reported in ***2013 7 MLJ 328 (S.Manoharan vs. Karunamurthy)*** and ***CDJ 2009 MHC 5288 (K.Sunthanthiram vs. V.Murugesan)***.

4. The said submission is opposed by the learned counsel for the respondents by submitting that the application seeking for amendment filed after the period of limitation has expired, cannot be entertained. He would also submit that the respondents have questioned the limitation in their written statement as well as the counter filed in the application seeking for amendment and even assuming that the application for amendment is permissible, without reference to the law of limitation, after the suit is barred by limitation, then the application cannot be entertained.

5. In the decisions relied upon the learned counsel for the petitioner, the proposition which came to be laid down was that, the cause of action for claiming the alternative relief for refund of the sale advance amount would arise, only when the main relief of specific performance is rejected and if an application for amendment is made within three years from the date of rejection of such a plea for specific performance, the same would be maintainable.

6. It is also the view of this Court that the limitation for seeking for amendment of the alternative relief would commence, only when the main relief of specific performance is rejected. The phrase "at any stage of the proceedings" has been contemplated under Section 22 of the Specific Relief Act for this purpose only.

7. The relevant portions of the decisions of this Court is extracted hereunder:

(a) ***(2013) 7 MLJ 328*** in the case of ***S.Manoharan vs. Karunamurthy***

> *10. Upon considering these pleadings as well as the evidence let in by both sides, the trial Court dismissed the suit. A perusal of the judgment of the trial Court would show that the question of limitation was not raised as an issue and the Court below has also not given any specific finding as to whether the suit was filed within the period of limitation or not. The finding of the trial court would only show that it had dismissed the suit only on the ground that the plaintiff did not take any steps within the time prescribed in the suit agreement. Not taking any steps within the time stipulated in the suit agreement is one thing and not filing the suit within the period of limitation is another thing. Thus, it is crystal clear that the question of limitation was not raised by the*

defendant in the written statement and not an issue framed by the trial Court while deciding the lis between the parties. When that being the position, let us consider as to whether the plaintiff, after filing the appeal before the appellate court, is entitled to file the amendment petition after a period of nearly five years from the date of dismissal of the suit and filing of the appeal to include the alternative relief of refunding the advance amount.

11. No doubt, at this juncture, it is to be noted that when an amendment of the plaint seeking to introduce a new or alternative relief is sought for, certainly the Court has to see as to whether such new or alternative relief sought to be introduced by way of amendment is barred by limitation or not. Then the question that would arise for consideration is as to when the period of limitation commences and ends. Answer to such question can not be uniform in all cases and on the other hand it depends upon facts, circumstances and the relief sought for in each case. In so far as the starting point of limitation is concerned there cannot be any doubt that it commences from the date on which the right to sue for such relief accrues. Here again, the date of accrual of such right would vary from facts and circumstances of each case. For instance, in a suit for declaration, if it is admitted by the plaintiff that the possession is with the defendant, then the right to sue for the relief of possession was also available to the plaintiff on the date of filing of the suit for *declaration itself. If such relief of possession is sought by way of amendment at a latter point of time, then the plaintiff is bound to explain and satisfy that such relief sought by way of amendment is not barred by limitation. Thus, a right already accrued has to be exercised within the period of limitation. But the same principle cannot be applied to a relief, if such relief is sought as an alternative relief. Certainly 'relief' and 'alternative relief' in a suit are not sought under one and the same circumstances and cause of action. The plaintiff may pray a relief by treating it as a main relief. He may also seek for an alternative relief if the Court comes to the conclusion that the main relief sought could not be granted . Thus, the right to claim such alternative relief may commence or accrue to the plaintiff not only at the time of filing the suit and also at the time when the Court declines the main relief to the plaintiff.*

12. Keeping this in mind, if we take the case of Specific performance suit, the plaintiff will normally seek for specific performance and in some cases there will be an alternative prayer also for refund of advance money. Such alternative prayer is sought for usually by contending that the same may be granted in case the court declines the main relief of specific performance. Therefore, if the suit for specific performance is filed within the period of limitation and got dismissed on the ground that the plaintiff was not ready and willing, then the alternative relief for refund of *advance money could be sought for at the appellate stage by amending the plaint, provided such application for amendment is filed within the period of limitation from the date of dismissal of such suit. Because of such dismissal, the defendant gets a right to file an appeal against the rejection of main relief and also a right to ask for an alternative relief. Applying this principle to the facts of the present case, it can be safely concluded that the alternative relief of refund of advance amount sought for by way of amendment is hopelessly barred by limitation. The suit came to be dismissed on 13.4.2007 and the appeal was filed on 3.12.2007. But the amendment petition was filed nearly after five years i.e. on 3.1.2012 when such right to seek alternative relief had accrued and further crystalised to the plaintiff on the date of dismissal of the suit itself. Thus, having not filed an application within three years from the date of dismissal of the suit, the relief sought in the amendment petition is undoubtedly barred by limitation.*

(b) ***CDJ 2009 MHC 5288*** in the case of ***K.Sunthanthiram vs. V.Murugesan***

26.The learned counsel for the appellant has submitted that the trial court after coming to the conclusion that the plaintiff was not entitled to the relief of specific performance of the contract, ought to have given a chance to the plaintiff to amend the plaint by seeking the alternative *relief of refund of advance amount and accordingly granted such relief; that the failure on the part of the trial court to do so will justify the interference by the appellate court as the relief of specific performance is discretionary and the prayer for the same can be rejected even if the plaintiff might be able to prove that he was ready and willing to perform his part of the obligations in accordance with the terms of contract and that in equity, the plaintiff would be entitled to a decree directing the defendant to refund the advance with or without interest depending on the circumstances of the case minus any damages for the loss sustained because of the non-fulfillment of obligations under the contract. But as per Section 22(2) of the Specific Relief Act, such relief cannot be granted unless such a prayer is made by the plaintiff in the plaint. It has been interpreted in a number of decisions that the mere failure on the part of the plaintiff seeking specific performance to make an alternative prayer for the refund of the advance amount shall not justify the dismissal of the suit without affording an opportunity to the plaintiff to include such a prayer by amending in the plaint. It has also been held that when the Court comes to the conclusion that the plaintiff would not be entitled to the relief of specific performance, it should have given an opportunity to the plaintiff to seek refund of the advance by amending the plaint. In this case, on verification of record, it is found that no such opportunity was given to the appellant/plaintiff. Therefore, the appellant/plaintiff* *has come forward with C.M.P.No.3538 for amending the plaint to incorporate a prayer for the alternative relief of refund of advance amount with interest. In the light of the above said judgments, it becomes imperative to allow the appellant/plaintiff to amend the plaint to include a prayer for the alternative relief of refund of advance amount. As the suit for the main relief of specific performance has been filed within the period of limitation, the inclusion of the prayer for alternative relief subsequently will not attract the bar of limitation since the grant of alternative relief depends upon the rejection of the plea for specific performance. Therefore, the civil miscellaneous petition has got to be allowed and the appellant/plaintiff shall be permitted to amend the plaint to incorporate a prayer for the alternative relief of refund of advance amount with interest. Point No.4 is answered accordingly.*

8. The aforesaid observations of this Court are self explanatory. Insofar as the submissions of the learned counsel for the respondents is concerned, it is seen on a perusal of the written statement, as well as the counter affidavit filed in support of the amendment application, that he has not questioned the limitation of the suit, but, on the other hand, he has pleaded that the plaintiff had filed the suit belatedly. Filing the suit belatedly and filing the suit after the limitation period are totally different. When the

defendants have not questioned the maintainability of the suit on the ground of limitation, it can only be said that the suit has been filed in time and therefore, the present application seeking for amendment will also be within the period of limitation. As such, the order of the Trial Court rejecting the petitioner's application, may not be proper.

9. It is made clear that all the observations made above are only for the purpose of answering the grounds raised by the respective counsels in the Civil Revision Petition and the Trial Court, while deciding the suit, shall not place reliance on any of the observations made in this revision for the purpose of determining the issues in the suit.

10. In the light of the above observations, I.A.No.122 of 2014 in O.S.No.61 of 2010 on the file of the learned Principal District Judge, Krishnagiri, is set aside. Consequently, the amendment sought for by the petitioner in his application in I.A.No.122 of 2014 stands allowed.

11. At this juncture, both the counsels requested this Court for a direction to the Trial Court to expedite the proceedings. It is seen that the suit is ripe for trial and since the same is pending from the year 2010 onwards, the

learned Principal District Judge, Krishnagiri shall endeavour to complete the suit proceedings as expeditiously as possible, in any event, within a period of six months from the date of receipt of copy of this order.

12. Accordingly, the Civil Revision Petition stands ordered. No costs. Consequently, connected Miscellaneous Petition is closed.

12.12.2018

Index:Yes/No
Speaking Order: Yes/No
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To
The Principal District Judge,
Krishnagiri.

M.S.RAMESH.,J

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