

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P.(PD).No.2960 of 2013

&

M.P.No.1 of 2013

Manickam

.. Petitioner

..Vs..

Mani

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order in I.a.No.40 of 2012 in O.S.No.5 of 2010 on the file of the 3rd Additional District Judge, Kallakuruchi dated 11.03.2013.

For Petitioner : Mr.V.Lakshminarayanan

For Respondent : Ms. Zeenath Begum

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ORDER

The instant revision has been filed challenging the order dated 11.03.2013 passed in I.A.No.40 of 2012 in O.S.No.5 of 2010 on the file of the learned Third Additional District Judge, Kallakuruchi.

Brief facts leading to the filing of the instant revision:

2. The petitioner is the plaintiff in the suit O.S.No.5 of 2010 on the file of the learned Third Additional District Judge, Kallakuruchi. The said suit was filed by the petitioner for specific performance of an agreement for sale entered into with the respondent. It is the case of the petitioner as seen from the plaint averments that he has paid an advance of Rs.12,50,000/- out of the total sale consideration of Rs.24,60,000/- for the purchase of suit schedule property. The respondent has also filed his written statement in the suit. Issues were also framed by the Trial Court and thereafter, the case was posted for trial. The petitioner has also filed his proof affidavit and the case was posted for cross examination of the petitioner's witness. At this stage, the petitioner filed an application I.A.No.40 of 2012 in O.S.No.5 of 2010 under Order VI Rule 17 of Code of Civil Procedure seeking to amend the plaint. The amendment sought for

by the petitioner in I.A.No.40 of 2012 is that according to him, in the plaint averment in paragraph 3, by inadvertence and due to a typographical mistake, he has pleaded that the respondent has admitted by writing on his own in the back side of the agreement that he has received a sum of Rs.10,00,000/- from the petitioner on 28.03.2008. According to the petitioner, the word “சொஸ்தலிகிதமாக” means acknowledging the receipt by writing on his own and the said statement is a typographical mistake and if it continues and remains in the plaint, it will adversely affect his interest in the suit. The respondent has also filed his counter before the Trial Court in I.A.No.40 of 2012 filed by the petitioner. The Trial Court by order dated 11.03.2013 dismissed I.A.No.40 of 2012 in O.S.No.5 of 2012.

3. Aggrieved by the order of dismissal dated 11.03.2013 in I.A.No.40 of 2012, the instant revision has been filed.

Submissions of the learned counsels:

4. According to the learned counsel for the petitioner, due to a typographical error, the petitioner in paragraph 3 of his plaint filed in

O.S.No.102 of 2009 has stated that the respondent in his own writing has admitted the receipt of a sum of Rs.10,00,000/- as advance of sale consideration on 28.03.2008 from the petitioner, which is not a correct statement and therefore, the petitioner was constrained to file an application under Order VI Rule 17 of Code of Civil Procedure to delete the word “சொஸ்தலிகிதமாக” which means admitted the receipt by writing on his own from the plaint averment in paragraph 3. According to him, the said amendment will not change the nature or the character of the suit. Further it is contended by the learned counsel for the petitioner that the typographical mistake came to the petitioner's knowledge only after commencement of trial.

5. Per contra, learned counsel for the respondent would submit that I.A.No.40 of 2012 was filed by the petitioner only after commencement of trial. In fact, even in the proof affidavit filed by the petitioner before the Trial Court, the averments contained in the plaint were repeated. According to her, due diligence was not exercised by the petitioner in filing an application under Order VI Rule 17 of Code of Civil Procedure, after commencement of trial.

6. Learned counsel for the respondent drew the attention of this Court to the Judgement of the Hon'ble Supreme Court in the case of ***J.Samuel & Others vs. Gattu Mahesh & Others*** reported in **2012 (2) CTC 94** and submitted that in a suit for specific performance of contract, omission of mandatory requirement running into few sentences cannot be called a typographical error. She also drew the attention of this Court to paragraph 15 of the said Judgment which reads as follows:

“15. In the given facts, there is a clear lack of 'due diligence' and the mistake committed certainly does not come within the preview of a typographical error. The term typographical error is defined as a mistake made in the printed/typed material during a printing/typing process. The term includes errors due to mechanical failure or slips of the hand or finger, but usually excludes errors of ignorance. Therefore the act of neglecting to perform an action which one has an obligation to do cannot be called as a typographical error. As a consequence the plea of typographical error cannot be entertained in this regard since the situation is of lack of due diligence wherein such amendment is impliedly barred under the Code.”

Relying upon the said observation of the Hon'ble Supreme Court, the learned counsel for the respondent submitted that amendment sought for by the petitioner is not a typographical error and therefore, the Trial Court has rightly rejected the said application.

7. The learned counsel for the respondent also drew the attention of this Court to another Judgment of the Hon'ble Supreme Court in the case of ***Rajkumar Gurawara (Dead) through Lrs. vs. S.K.Sarwagi and Company Private Limited and Another*** reported in ***(2008) 14 SCC 364*** and submitted that since the petitioner has not given satisfactory reasons for not filing the amendment application before commencement of trial, the Trial Court has rightly rejected the application filed by the petitioner. She also submitted that Order VI Rule 17 of Code of Civil Procedure enables any party to file an application before or after commencement of trial, but for an application that is filed after commencement of trial, the Court will have to be satisfied that due diligence was shown by the party for not filing the application before trial. According to her, the suit has been filed by the petitioner for specific performance of an agreement of sale. She further submitted that

the receipt of amount by the respondent from the petitioner is not in dispute and the only dispute raised by the petitioner is that it is only a loan transaction and not a sale transaction.

Discussion:

8. According to the petitioner, the averments made by him in paragraph 3 of his plaint that the respondent has admitted the receipt of a sum of Rs.10,00,000/- on 28.03.2018 by writing on his own is a typographical error and therefore, he has sought for an amendment to delete the term “சொஸ்தலிகிதமாக” which means admitting and writing on his own in application I.A.No.40 of 2012 under Order VI Rule 17 of Code of Civil Procedure.

9. The suit is filed for specific performance which is a discretionary relief. The amendment sought for in the plaint is only for deletion of a single word “சொஸ்தலிகிதமாக” and it is also not in dispute that a sum of Rs.12,50,000/- was received by the respondent in installments. The only dispute raised by the respondent is that the said amount was received as loan and not as sale advance. This issue will have to be adjudicated by

the Trial Court, only after considering the oral and documentary evidence let in by both the parties to the dispute.

10. In the affidavit filed by the petitioner in support of I.A.No.40 of 2012, he has stated that a typographical error namely “சொஸ்தலிகிதமாக” came to his knowledge only after commencement of trial after his advocate perused the proof affidavit filed by him. The receipt of a sum of Rs.10,00,000/- by the respondent on 28.03.2008 from the petitioner has not been disputed by the respondent. Being a suit for specific performance and the relief is a discretionary relief, each and every word in the pleadings will have to be scrupulously considered by the Court before granting or rejecting the said relief. In the case on hand, the petitioner wants to delete the word “சொஸ்தலிகிதமாக” which means admitting and writing on his own in the plaint, since according to him, it was a typographical mistake.

11. This Court is in agreement with the submissions made by the learned counsel for the petitioner that the said word “சொஸ்தலிகிதமாக” may have a bearing to the final outcome in the suit. The petitioner has

also sufficiently satisfied this Court as seen from the averments contained in I.A.No.40 of 2012 in O.S.No.5 of 2010 that the petitioner came to know about the typographical error only after commencement of trial. Therefore, this Court is of the considered view that the petitioner has satisfied the requirements of proviso to Order VI Rule 17 of Code of Civil Procedure.

12. The judgment relied upon by the learned counsel for the respondent reported in 2012 (2) CTC 94 is not applicable to the facts of the instant case. In that suit, the plaintiff in a suit for specific performance did not make an averment in the original plaint that he was ready and willing to perform his part of the contract which he intended to include by way of an amendment. This amendment was held to be impermissible by the Hon'ble Supreme Court, as it alters the character of the suit. In the case on hand, the petitioner seeks only deletion of the word “சொஸ்தலிகிதமாக” and nothing else and therefore, the Hon'ble Supreme Court Judgment cited supra does not apply to the instant case.

13. As observed earlier, the reason for not filing an amendment application prior to the commencement of trial has been duly explained by the petitioner in the affidavit filed in support of I.A.No.40 of 2012, therefore, the Judgment reported in 2008 (14) SCC 364 relied upon by the learned counsel for the respondent will also not apply to the facts of the instant case.

14. This Court has also perused and examined the impugned order. The Trial Court has erroneously come to a wrong conclusion that the petitioner has not satisfied the court that he has exercised due diligence for not having filed the application under Order VI Rule 17 of Code of Civil Procedure prior to commencement of trial. In the considered view of this Court, for effective adjudication of the dispute between the parties, the amendment sought for by the petitioner ought to have been allowed by the Trial Court.

Conclusion:

15. In the result, the order dated 11.03.2013 passed in I.A.No.40 of 2012 in O.S.No.5 of 2010 is hereby set aside and the Civil Revision

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Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

16. Due to the long pendency of the suit, the Trial Court is directed to dispose of the suit O.S.No.5 of 2010 within a period of four months from the date of receipt of a copy of this Order.

10.12.2018

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Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking orders

To

The 3rd Additional District Judge,
Kallakuruchi

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ABDUL QUDDHOSE, J.



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