

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.323 of 2018

ORDER:

Plaintiff in O.S.No.143 of 2011 on the file of Junior Civil Judge, Nandikotkur, Kurnool district is the petitioner in the present revision filed under Article 227 of the Constitution of India.

2. The petitioner herein instituted the said suit for permanent injunction. When the said suit stood posted for further evidence on behalf of defendant/respondent herein, the present I.A.No.556 of 2017 was filed under the provisions of Order VI Rule 17 of Code of Civil Procedure seeking amendment of written statement. The plaintiff/petitioner herein resisted the said application by way of filing counter. The learned Junior Civil Judge, by way of order dated 6.12.2017, allowed the said application, ordering amendment of written statement. This revision assails the validity and legal sustainability of the said order.

3. Heard the learned counsel for the petitioner. Despite service of notice, none appeared for the Respondent.

4. It is contended by the learned counsel for the petitioner that the order passed by the learned Junior Civil Judge is erroneous, contrary to law and is opposed to the very spirit and object of Order VI Rule 17 of CPC. It is the further submission of the learned counsel that since the respondent herein filed the application, admittedly, after commencement of trial, the learned Junior Civil Judge ought not to have allowed the application in the absence of any due diligence on the part of the respondent. It is further submitted that the Court below ought to have taken into consideration the conduct of the Respondent in changing the

counsel and filing the present application without assigning any reasons. In support of his submissions and contentions, the learned counsel for the petitioner placed reliance on the judgment of the Apex Court in *Chander Kanta Bansal v. Rajinder Singh Anand*¹.

5. The information available before this Court reveals that after closure of evidence on behalf of plaintiff and when the matter stood posted for further evidence on behalf of defendant, the present application came to be filed seeking amendment of the written statement. Therefore, admittedly, the present application came to be filed after commencement of trial. In this connection, it may be appropriate to refer to the provisions of Order VI Rule 17 of CPC, which reads as under:

“Amendment of pleadings.—

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:

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.”

6. It is very much obvious from a reading of the proviso to Rule 17 of Order VI that no application for amendment shall be allowed after commencement of trial, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before commencement of trial. In the affidavit filed in support of the

¹ AIR 2008 SC 2234

application, the Respondent herein stated that his pleadings were not noted in the written statement filed earlier. In the considered opinion of this Court, the said reason, by any stretch of imagination, cannot be construed as due diligence. The condition precedent for exercising jurisdiction under Order VI Rule 17 of CPC in favour of the applicant can be exercised only when the party is successful in showing the aspect of due diligence. In the instant case, the same is conspicuously absent. Apart from the same, in the impugned order, the learned Judge also categorically observed about the laches on the part of the petitioner in the absence of any reasons for delay. In the judgment in *Chander Kanta Bansal v. Rajinder Singh Anand*, the Hon'ble Apex Court held that unless the party takes prompt steps, mere action cannot be accepted. Therefore, the order passed by the learned Junior Civil Judge, Nandikotkur, in the considered opinion of this Court, cannot be sustained in the eye of law.

7. Accordingly, the Revision is **allowed**, setting aside the order dated 6.12.2017 passed by the Court of Junior Civil Judge, Nandikotkur, Kurnool district in I.A.No.556 of 2017 in O.S.No.143 of 2011 and consequently the said I.A. stands dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 16.2.2018
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