

HON'BLE SRI JUSTICE S.V.BHATT

C.R.P. No.4086 OF 2012

ORDER:

Heard Mr.Ravishankar Rao for petitioner and Mr.Satyaraja Babu for respondent.

The revision is filed questioning the legality of the order dated 22.06.2012 in I.A.No.285 of 2012. The respondent filed O.S No.619 of 2010 for relief of declaration that the termination of respondent's service vide letter dated 24.11.2010 is illegal and for consequential mandatory injunction directing the revision petitioner to reinstate the respondent into service and continue the respondent in Bhadrachalam Public School and Junior College.

The respondent filed I.A.No.285 of 2012 under Order 6 Rule 17 of CPC to amend the plaint and incorporate the following pleas and prayers:

"Add "10.A. If the defendant wants to terminate the employment of plaintiff, there shall be sufficient cause. Without sufficient cause it has no right to terminate her employment unilaterally. As such plaintiff filed the suit for her re-instatement in the same post. If the defendant has no interest to continue her re-instatement, it has to pay suitable damages for terminating her services illegally. Plaintiff is a meritorious teacher having good experience in teaching. Due to illegal termination of employment she sustained much mental agony, and lost her reputation in her friends and relatives circles and in the eye of public. More than that she lost her earnings @ 14,000/- per month for 23 years. Taking into consideration of all these facts plaintiff estimated the damages at Rs.35,00,000/- and the defendant is liable to pay the same as alternative relief." After para 10 of the plaint.

2. Add “ or alternatively direct the defendant to pay a sum of Rs.35,00,000/- as damages to the plaintiff.” After the words ‘with all emoluments and seniority’ in the para 13(A) of the plaint.
3. Add “For the relief of alternative relief the plaintiff estimated the damages at Rs.35,00,000/- and on which the required court fee of Rs..... is paid as per section 20 of APCF & SV Act and the same is deposited through pay in slip.” In continuation of para 14 of plaint.
4. Replace Rs.41,535/- with Rs.35,41,535/- in para 15 of plaint.”

The revision petitioner objected the amendment in law as well as in fact. The trial Court through the order impugned in the CRP allowed the prayer for amendment. Hence, the CRP at the instance of defendant in O.S. No.619 of 2010.

Mr.Ravishanker Rao contends that the frame of suit as made amounts to specific performance of contract of service and such suit is not maintainable. The present application for amendment is made after I.A.No.700 of 2010 filed by respondent herein for injunction was dismissed. The amendment either of pleading or prayer if is allowed, the proposed amendment substantially changes the nature of the suit. He further contends that through the amendment, the respondent claims Rs.35,00,000/- towards damages and assuming that the amendment is permissible (without admitting) the trial Court did not have jurisdiction to entertain the application which affects its jurisdiction and secondly after allowing the amendment cannot proceed with the trial of the matter.

Mr.Satyaraja Babu submits that the proposed amendment neither in fact nor in law changes the nature of the suit. The sheet

anchor of the contention continues to be the termination letter dated 24.11.2010. The respondent since is advised to pray for alternative relief in the event that the respondent is successful still the revision petitioner does not want to take back the petitioner into service. Therefore, the alternative relief is prayed to award damages amounting to Rs.35,00,000/-

Mr. Satyaraja Babu compares the alternative prayer to the relief considered by the Labour Court under Section 11-A of the Industrial Disputes Act where even the termination order is illegal and erroneous, still the Labour Court in a few cases may not order reinstatement but considers granting other reliefs. In the case on hand, the Civil Court is similarly situated and it is for petitioner to prove the case either against the first relief or against the alternative relief. On the continuation of suit on the file of Principal Junior Civil Judge at Kothagudem, he fairly concedes that even if the Court has power to entertain the application for amendment, the jurisdiction of the Court is affected only with the order of the amendment petition. Once the amendment petition is ordered, the plaint is required to be returned for proper presentation before the Court having territorial and pecuniary jurisdiction.

The 1<sup>st</sup> submission of the revision petitioner that the alternative prayer changes nature of the suit is merely canvassed without substantiating as to how the alternative prayer of damages changes the nature of the suit. The first contention is rejected.

Adverting to the 2<sup>nd</sup> contention that the trial Court ought not to have entertained the amendment petition is untenable

inasmuch as the party is given liberty to make application for amendment under Order 6 Rule 17 CPC. The continuation of lis before the same Court or the Court not having the pecuniary jurisdiction depends upon the outcome of the amendment of application. In the case on hand, after the amendment is allowed, the learned Principal Junior Civil Judge shall not have pecuniary jurisdiction to consider the prayer.

For the above reasons, the CRP fails and is dismissed. The learned Principal Junior Civil Judge is directed to return the plaint to respondent within 14 days from today, and the respondent is to re-present the plaint before the Court having jurisdiction.

No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.



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S.V.BHATT, J

Date:07.09.2018  
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