

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.3615 OF 2013

ORDER:

This civil revision petition is filed under Section 115 of Code of Civil Procedure (for short "C.P.C.") challenging the order dated 21.02.2013 passed in I.A.No.687 of 2010 in A.S.No.147 of 2009 by the XIV Additional Chief Judge (Fast Track Court) City Civil Court, Hyderabad, whereby, the petition filed under Order VI Rule 17 of C.P.C. was dismissed.

The petitioners herein filed petition I.A.No.687 of 2010 under Order VI Rule 17 of C.P.C. seeking leave of the Court to amend the written statement filed by defendant No.4 to add paragraph No.8 (a) and raised certain pleas based on subsequent incidents. The respondent/plaintiff filed the suit for injunction and the same was decreed by the trial Court on 03.03.2009. Aggrieved by the judgment and decree, the petitioners herein have preferred the above appeal and during the pendency of the suit, they submitted B.P.S. application for regularization of deviations made in the construction. Even the witness deposed on behalf of the Corporation has categorically admitted that B.P.S. application filed by the defendant Nos.1, 2 and 4 to 7 is pending. After the disposal of the suit, the defendant No.3 i.e. G.H.M.C. authorities vide proceedings No.BPS/190/TPS/CB/CZ/GHMC/2008 dated 26.10.2009 regularized the construction made by the petitioners, as such the subsequent event is important for proper adjudication of the case. As such the petitioners/defendants sought leave to

amend the written statement filed by defendant No.4 by adding para 8 (a), which is as follows:

“These defendants respectfully submits that the defendant No.3 i.e. GHMC Authorities as per the powers conferred under G.O.Ms.No.901, M.A., dated 31.12.2007 and amended vide G.O.Ms.No.112, M.A., dated 31.12.2008 was pleased to regularize the construction made by the petitioners/defendants 1, 2 and 4 to 7 vide its order dated 26.10.2009 and collected penalized charges amount of Rs.10,48,684/- and has regularized the deviations vide proceedings No.BPS/190/TPS/C8/CZ/GHMC/2008, dated 26.10.2009. As such there is no such authorized construction as being claimed by the plaintiff.”

It is further contended that the above regularization is a subsequent event, which has to be brought on record, therefore, prayed to permit him to amend the written statement as claimed in the petition.

The respondent/plaintiff filed counter denying material allegations while contending that he filed the suit and after full-fledged trial the suit was decreed directing the petitioners herein to remove the deviations abutting to 3 sides of their property. During pendency of suit, it was not disclosed about filling of application for regularization and later obtained regularisation order. Totally suppressing the facts keeping the respondent/plaintiff in darkness, the petitioners herein filed the present petition on various grounds to take advantage of the order passed by the G.H.M.C. for regularisation. If for any reason, such amendment is permitted, again an additional issue has to be framed and opportunity has to be afforded to the plaintiff to file rejoinder, thereafter evidence has to be let in on the issue, if any, framed and it would delay the proceedings, in such case the amendment cannot be allowed and raised several other contentions.

Upon hearing argument of both the counsel, the Court below dismissed the petition.

Aggrieved by the order passed by the Court below, the present civil revision petition is filed by the petitioners/defendants under Section 115 of C.P.C. mainly contending that the basis for the claim is that passing of order by G.H.M.C. vide proceedings No.BPS/190/TPS/CB/CZ/GHMC/2008 and the same is a subsequent order, and such subsequent event has to be brought on record. Hence, dismissal of the petition refusing to grant leave to amend the written statement is a clear error, consequently the order is unsustainable and prayed to allow the petition setting aside the order passed by the Court below.

During hearing, learned counsel for the petitioners while reiterating the grounds urged in the revision petition placed reliance on judgment of Apex Court rendered in “**State of Bihar v. Modern Tent House¹**” “**Shikharchand Jain v. Digamber Jain Praband Karini Sabha²**” and unreported judgment of Rajasthan High Court rendered in “**Sunil Goyal v. Additional District Judge (S.B.Civil Writ Petition No.14226 of 2009)**”

Whereas, learned counsel for the respondent/plaintiff while supporting the order of the trial Court in all respects placed reliance on judgment of this Court in “**G.S.Prakash v. Polasa Hanumanlu³**” and requested this Court to dismiss the revision confirming the order passed by the Court below.

¹ AIR 2017 Supreme Court 4966

² AIR 1974 Supreme Court 1178

³ 2015 (2) ALT 594

On considering the rival submissions and perusing the material available on record, the point that arises for consideration is as follows:

“Whether the order dated 26.10.2009 issued by the G.H.M.C. vide proceedings No.BPS/190/TPS/ CB/ CZ/ GHMC/2008 regularizing unauthorized construction is a subsequent event, if so, whether the proposed amendment be permitted?”

P O I N T:

Undisputedly, the suit was filed for grant of permanent injunction and for mandatory injunction for removal of unauthorised constructions and the suit was decreed. Aggrieved by the said judgment and decree, the defendants preferred appeal and same is pending adjudication. During pendency of the appeal, it appears that an application was submitted by the petitioners herein to the Municipal Corporation for regularisation of unauthorised construction in terms of G.O.Ms.No.901, M.A. dated 31.12.2007 and amended vide G.O.Ms.No.112, M.A. dated 31.12.2008 and seeking leave of the Court to raise such plea, which is a subsequent event.

But the respondent/plaintiff opposed the application on the ground that the regularisation proceedings were issued without knowledge of the respondent/plaintiff though the proceedings are pending before the Court, as such order passed by the Municipal Corporation is without notice to respondent/plaintiff is illegal and it is opposed to principles of natural justice. If for any reason, such amendment is permitted, again an additional issue has to be

framed and opportunity has to be afforded to the plaintiff to file rejoinder, thereafter evidence has to be let in on the issue, if any, framed and it would delay the proceedings, in such case the amendment cannot be allowed. Apart from that, there is a specific bar to proviso to Order VI Rule 17 of C.P.C., consequently dismissal of the petition is legal and it cannot be interfered while exercising power under Section 115 of C.P.C.

It is an undisputed fact that a decree was passed against the petitioners for removal of unauthorised construction in violation of building plan, but to overcome the decree passed by the Court below the petitioners appears to have been approached the Municipal Corporation and applied for regularisation of building and obtained the same on payment of penal fee. No notice was contemplated to the person, who is effected on account of such construction, but the Municipal Corporation authorities passed the order regularising the construction.

The regularisation order was passed on 26.10.2009 i.e. during pendency of the appeal, by that time entire trial was over and decree was passed. But the bar under proviso to Order VI Rule 17 of C.P.C. cannot be applied to the present facts of the case, since the scheme was announced during pendency of the suit. Accordingly, the petitioner applied for regularisation to the Municipal Corporation and the Municipal Corporation by collecting Rs.10,48,484/- towards penal fee and passed regularisation proceedings dated 26.10.2009. When any incident took place during pendency of appeal, which affects the rights of the parties having direct bearing on the issue involved in the case, a subsequent incident can be brought on record by invoking Order

VI Rule 17 of C.P.C. The bar to proviso to Order VI Rule 17 of C.P.C. will have no application as there was no opportunity for the parties to raise such plea before commencement of trial.

Undoubtedly, the regularisation order was passed during pendency of the trial without notice to the respondent/plaintiff, but to pass an order regularising unauthorised constructions, a separate procedure is provided. But notice to the respondent/plaintiff is not mandatory as per the guidelines fixed under Government Orders referred supra. The proviso to Order VI Rule 17 of C.P.C. has no application to the present facts of the case for the simple reason that the regularisation order was passed during pendency of the appeal, which is a subsequent event during pendency of the appeal, hence question of raising such plea before commencement of trial before the trial Court does not arise. Therefore, such plea can be raised subsequent to commencement of trial or in the appeal as it is a subsequent event during pendency of appeal. This view is fortified by the Apex Court in its judgment rendered in “**Shikharchand Jain v. Digamber Jain Praband Karini Sabha**” (referred supra). In the said judgment, the Apex Court made it clear that it is open to the Court (including a Court of appeal) to take notice of events which have happened after the institution of the suit and afford relief to the parties in the changed circumstances where it is shown that the relief claimed originally has (1) by reason of subsequent change of circumstances become inappropriate; or (2) where it is necessary to take notice of the changed circumstances in order to shorten the litigation, or (3) to do complete justice between the parties.

An identical principle is laid down by the Apex Court in the recent judgment also rendered in “**State of Bihar v. Modern Tent House**”(referred supra). In the said judgment, the Apex Court held that the proposed amendment is on facts and the Appellants in substance seek to elaborate the facts originally pleaded in the written statement; secondly and in other words, it is in the nature of amplification of the defense already taken; thirdly, it does not introduce any new defense compared to what has originally been pleaded in the written statement; fourthly, if allowed, it would neither result in changing the defense already taken nor will result in withdrawing any kind of admission, if made in the written statement; fifthly, there is no prejudice to the Plaintiffs, if such amendment is allowed because notwithstanding the defense or/and the proposed amendment, the initial burden to prove the case continues to remain on the Plaintiffs; and lastly, since the trial is not yet completed, it is in the interest of justice that the proposed amendment of the Defendants should have been allowed by the Courts below rather than to allow the Defendants to raise such plea at the appellate stage, if occasion so arises.

The principle laid down in the above judgment has no direct application to the present facts of the case except an observation that such plea can be raised at the appellate stage, if occasion so arises, that too trial in the suit before the trial Court is still going on as observed in paragraph No.7 of the said judgment and the proposed amendment is nothing but an elaboration of facts and changing the defence set up by the defendant in the main suit filing written statement.

Similar view was also expressed by the Rajasthan High Court in “**Sunil Goyal v. Additional District Judge (S.B.Civil Writ Petition No.14226 of 2009)**”

In “**Rameshkumar Aggarwal v. Rajamala Exports Private Limited and others**”⁴, the Apex Court relying on “**Revajeetu Builders and Developers v. Narayanaswamy & Sons and others**”⁵, to decide the scope of proviso to Order VI Rule 17 C.P.C laid down certain guidelines for granting or denying relief under Order VI Rule 17 of CPC viz., 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.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

It is clear that while deciding the application for amendment ordinarily the court must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide and dishonest amendments. The purpose and object of Order VI Rule 17 of the Code is to

⁴ AIR 2012 SC 1887

⁵ 2009(8) SCJ 401

allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the courts while deciding such prayers should not adopt a hyper-technical approach. Liberal approach should be the general rule particularly, in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.

24. The Apex Court further held that,

"amendment application to be filed if necessary immediately after filing suit i.e. before commencement of trial. If the petitioners are able to prove or explain as to how they failed to take steps before the trial commenced despite exercising due diligence, the Court can allow such amendment. The factum of exercising due diligence depends upon circumstances."

Similarly in "**G.S. Prakash v. Polasa Hanumanlu**" (referred supra), learned single Judge of this Court laid down certain guidelines where an amendment has to be allowed and also instances where amendment has to be refused and it reads as follows:

17. I do not intend to burden this Judgment with myriad precedents on the subject. On a careful analysis of the judicial precedents referred to above, it needs to be held that as a general rule, the Courts have to adopt a liberal approach in considering the applications for amendment of pleadings, subject to certain exceptions. Without intending to be exhaustive, but only illustrative, broadly stated, instances on either side are stated hereunder:

"Instances where amendments have to be allowed :

- (a) All pre-trial stage (prior to examination of witnesses) amendments which do not alter the nature and character of the suit and substitute or introduce new cause of action;
- (b) In cases of pending or post-trial amendments, the Court must allow the same subject to the applicant, in addition to satisfy the condition (a) supra, satisfying two other conditions, viz., (i) that the amendment is necessary for determining the real questions in controversy and (ii) that despite due diligence, the applicant could not move the application at an earlier stage;
- (c) Where, the proposed amendment will not work injustice or cause prejudice to the other side;
- (d) Where, by the proposed amendment the position of the other party will be altered, but the same can be compensated by costs;

(e) Even where the proposed amendment introduces inconsistency in pleadings, if by the proposed amendment, the party does not seek to resile from the admissions if any made in the original pleadings;

(f) Where the proposed amendment relates to a time barred claim and the Court is satisfied that allowing such amendment really subserves the cause of justice and avoids further litigation.

Instances where amendments have to be refused:

(i) Where by the proposed amendment the party seeks to alter the nature, character and constitution of the suit (mere inconsistent pleadings may not, in all cases, change the nature and character of the suit) or substitute cause of action or introduce a distinct cause of action;

(ii) where the valuable defence by way of admissions by a party has accrued to the opposite party and by the proposed amendment the party intends to resile from such admissions;

(iii) where the position of the other party will be altered by the proposed amendment and the injury caused to him by such alteration could not be compensated in costs.

(iv) Where the proposed amendment lacks bonafides and is far too belated and the party seeking the amendment was not diligent in approaching the court;

(v) Where a fresh suit, if instituted on the proposed amendments, will be barred by law;"

In view of the law declared by the Apex Court, if the proposed amendment would not change the nature of defence and it is a subsequent event that occurred during pendency of the appeal or proceeding in a suit before the trial Court, such amendment can be permitted.

The proposed amendment (extracted above) is only to decide the real controversy between the parties and whether the Municipal Corporation followed the procedure in issuing orders regularising the unauthorised construction is not a question to be decided in the present appeal pending before the appellate Court. Therefore, subsequent event can be brought on record by way of amendment under Order VI Rule 17 of C.P.C. and the proviso

thereto will not come in the way of permitting such amendment, though the learned counsel for the respondent relied on judgment of this Court rendered in “**G.S. Prakash v. Polasa Hanumanlu**” (referred supra), since the proposed amendment is based on subsequent event that took place during pendency of the appeal. Therefore, allowing the amendment by the Court does not amount to change of defence in the written statement and the appellate Court is bound to take note of subsequent event that took place during pendency of the proceedings to pass appropriate order when the relief claimed initially is appropriate to the circumstances in view of the subsequent event.

The judgment relied on by the learned counsel for the respondent is with regard to general principles pertaining to ordering petitions filed under Order VI Rule 17 of C.P.C. and the same has no application to the present facts of the case as the proposed amendment is based on subsequent event.

The appellate Court negated the relief and dismissed the petition filed under Order VI Rule 17 of C.P.C. without considering the incident that took place during pendency of the appeal before the appellate Court. Whether the order passed by the Municipal Corporation is in accordance with law or not cannot be decided in the appeal also. As the order passed by the Municipal Corporation regularising the alleged unauthorised construction, the same has to be taken note while passing decree or judgment by the appellate Court in the appeal, otherwise the very purpose of amending pleadings in view of subsequent events become redundant and lead to serious consequences.

Hence, taking into consideration of nature of proposed amendment based on subsequent event, I hold that it is a fit case to permit the defendants to amend the pleadings as claimed in the petition. However, the respondent/plaintiff is entitled to file rejoinder to the amended written statement and can contest the suit, as declining permission to amend the written statement may multiply the proceedings.

One of the contentions raised by the learned counsel for the respondent/plaintiff is that in case the amendment is allowed, it requires further evidence, it is not a ground to reject the amendment as it is based on subsequent event. If the appellate Court feels that any further evidence is necessary in view of the amendment of written statement on account of subsequent event, the appellate Court by itself can record evidence or direct the trial Court to record evidence and send to the appellate Court under Order XLI Rule 28 of C.P.C. subject to filing of application under Order XLI Rule 27 of C.P.C., if any.

In the result, the civil revision petition is allowed, setting aside the order dated 21.02.2013 passed in I.A.No.687 of 2010 in A.S.No.147 of 2009 by the XIV Additional Chief Judge (Fast Track Court) City Civil Court, Hyderabad and the I.A.No.687 of 2010 in A.S.No.147 of 2009 is allowed permitting the petitioner to amend the written statement. No costs.

Consequently, miscellaneous applications pending if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

14.03.2018
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