

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2907 OF 2017

ORDER:

The Civil Revision Petition under Article 227 of the Constitution of India is filed by the petitioner challenging the order dated 06.03.2017 in I.A.No.1306 of 2016 in O.S.No.28 of 2014 passed by the Principal Junior Civil Judge, Amalapuram, whereby the petition filed petition under Order VI Rule 17 and Section 151 C.P.C. for its pre-trial amendment, was dismissed while observing that the trial of the suit was adjourned on many times at the request of the plaintiff and thereby it is impermissible to grant leave to amend the plaint.

2. The petitioners are the plaintiffs before the Court below filed suit for injunction simplicitor restraining the respondents herein from interfering with the possession and enjoyment of the petitioners. After filing written statement in view of denial of title, the petitioners filed this petition to convert the suit for injunction into suit for declaration and sought leave of the Court to amend the plaint. The respondents opposed the same on the ground that the suit was adjourned many times on the request of the plaintiffs and the petitioners wants to stall the proceedings for one reason or the other. Therefore, the petitioners are not entitled to convert the suit for injunction simplicitor into suit for declaration.

3. Upon hearing both counsel, the Court below dismissed the petition on the ground that the trial was not commenced only on account of delay of the plaintiffs and the petitioners are not entitled to claim such relief at this stage.

4. Aggrieved by the same, the present revision petition is filed contending that the pre-trial amendment can be allowed and the bar under proviso to Order VI Rule 17 C.P.C. will not come in the way of ordering

amendments, the petitioners can seek leave of the Court to amend the plaint.

5. During hearing learned counsel for the petitioners reiterated the same grounds while learned counsel for the respondents opposed on the ground that there is abnormal delay in filing the petition to seek leave of the Court to amend plaint under Order VI Rule 17 C.P.C.

6. As seen from the material on record, the petitioners filed suit for injunction simplicitor. But on account of denial of title of the plaintiffs by filing written statement on 17.02.2015, the petitioners are forced to amend the prayer appropriately claiming declaratory relief, though issues were framed on 13.11.2015. The amendment petition was filed before the Court below on 21.09.2016 i.e. almost after 11 months from the date of framing issues. During the period of 11 months, the petitioners obtained adjournments without commencing trial. But the law is well settled that the pre-trial amendment shall be allowed liberally. Therefore, the amendments after commencement of trial cannot be allowed as a matter of routine in view of proviso to Order VI Rule 17 C.P.C. brought by amendment Act 22 of 2002.

7. Even according to Order VI Rule 17 C.P.C. the amendment can be allowed at any stage of the proceedings. Therefore, pre-trial amendment can be permitted and the theory of due diligence enunciated under Proviso to Order VI Rule 17 C.P.C. will not come in the way of ordering such amendments. The Apex Court in **Revajeetu Builders and Developers v. Narayanaswamy & Sons and others**¹, 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

¹ 2009(8) SCJ 401

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 changes 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 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."

8. The same principles are reiterated in **Rajesh Kumar Aggarwal and others v. K.K. Modi and others**². Wherein the Apex Court held as follows:

"The object of Order 6 Rule 17 is that the Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. The rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court. The Court always gives leave to amend the pleadings of a party unless it is satisfied that the party applying was acting mala fide. The amendment to pleading should be liberally allowed since procedural obstacles ought not to impede the dispensation of justice. The Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice."

It is further held that

"While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment."

9. In view of the law declared by the Apex Court in the judgments referred supra, when the amendment is pre-trial, the Court must allow such amendments liberally. But the Court below making certain observations that the petitioners protracted the proceedings for commencing trial and such finding is illegal on the face of record. Therefore, exercising power under Article 227 of the Constitution of India,

² 2006 (3) ALT 50 (SC)

this Court can rectify such error and consequently, the revision petition is liable to be allowed.

10. In the result, the civil revision petition is allowed setting aside the order dated 06.03.2017 in I.A.No.1306 of 2016 in O.S.No.28 of 2014 passed by the Principal Junior Civil Judge, Amalapuram granting leave to the petitioners to amend the pleadings as claimed in I.A.No.1306 of 2016 in O.S.No.28 of 2014. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending shall stand closed.

M. SATYANARAYANA MURTHY, J

06.11.2018

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