

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION No. 2732 OF 2017

ORDER:

This civil revision petition is filed by the defendant aggrieved by the order dated 28.02.2017 passed in IA No.220 of 2017 in OS No.91 of 2016 on the file of the Court of Principal Junior Civil Judge, Chirala, Prakasam District, dismissing the petition filed under Order-VI Rule-17 CPC seeking permission to amend the written statement.

2. The factual matrix of the case in brief is that the respondent-plaintiff filed the suit in OS No.91 of 2016 against the revision petitioner/defendant seeking money decree on the strength of two pronotes allegedly executed by him for Rs.65,000/- and Rs.75,000/- respectively. The defendant filed written statement taking the plea that he approached the plaintiff to obtain loan for his necessities and the plaintiff promised to lend money by insisting him to execute two promissory notes with his own hand writing. Keeping in view of his necessities, the defendant executed two promissory notes with his own hand writing and handed over to the plaintiff. However, the plaintiff did not pay the amounts under two

pronotes stating that the loan amount is not readily available with him and asked the defendant to come after some time. Taking advantage of the innocence of the defendant, the plaintiff with a view to gain wrongfully, threatened the defendant to sell his share of the property to him for lowest price fixed by him, failing which, he would file a suit basing on two pronotes executed by him. As the defendant did not agree to the demand made by him, the plaintiff filed the above suit on the strength of two pronotes, which were not supported by any consideration.

3. Be that as it may, when the matter came up for hearing, the respondent/plaintiff filed his chief-affidavit. At that stage, defendant filed IA No.220 of 2017 under Order-VI Rule-17 CPC seeking permission to amend his written statement to add the plea that he used to consume alcohol in drunken state of mind for some time and taking advantage of his weakness, the respondent/plaintiff obtained the alleged two pronotes to have wrongful gain. The respondent/ plaintiff opposed the said petition. Having heard both sides, the trial court passed the impugned order observing that the factum of the defendant was in the habit of consuming alcohol and while he was in such state, plaintiff obtained the suit promissory notes and there was not

pleaded in the written statement and defendant should be diligent and cautious in taking the pleas in the written statement and he cannot be permitted to take such plea when the trial has begun and without giving plausible explanation for not taking such plea in the original statement. The trial court accordingly, dismissed the petition. Hence, the present civil revision petition.

4. Heard learned counsel for petitioner.

5. Notice was served on respondent, but there is no representation on his behalf.

6. Learned counsel for revision petitioner would submit that even assuming that original plea in the written statement and the plea that is now proposed to be taken in the amended written statement are held to be inconsistent pleas, the trial court ought not to have dismissed the petition on that ground alone. In support of his contention, he relied upon the decision of the Apex Court in **USHA BALASHAHEB SWAMI AND OTHERS V.KIRAN APPASO SWAMI AND OTHERS**¹. He thus, prayed to allow the revision.

7. On a careful scrutiny of plaint, written statement and impugned order, this court is not able to appreciate the above

¹ (2007) 5 Supreme Court Cases 602

argument of learned counsel for revision petitioner. It must be noted that trial court basically dismissed the petition on the main ground that defendant was in the habit of consuming alcohol is a personal fact which was to his knowledge and no reason was mentioned as to why he did not take that plea in the original written statement and he has not applied due diligence while filing the original written statement by taking all necessary pleas and therefore, he cannot be permitted to amend his pleas once the trial has begun. That being the observation, the revision petitioner has to convince this court as to how in spite of applying the due diligence, he could not seek for amendment of the written statement before commencing the trial. Now, it is necessary to examine Order-VI Rule-17 CPC, which reads thus:

"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."

8. The above proviso would show that no application for amendment shall be allowed after trial has commenced, unless the court comes to the conclusion that in spite of due diligence the party could not have raised the issue before commencement

of trial. Therefore, the touch stone for allowing or disallowing the amendment of the pleadings is the application of due diligence by the concerned party.

9. In the instant case, as rightly observed by the trial court, the proposed amended plea contains a fact to the effect that the revision petitioner-defendant was habituated to consuming alcohol and in that state of mind, the respondent-plaintiff obtained pronotes from him. That being the case, the revision petitioner ought to have taken the said plea in his original written statement but not by way of amendment after commencement of trial. Thus, it can be concluded that the revision petitioner failed to pose due diligence test under Order-VI Rule-17 CPC and therefore, this court finds no illegality or irregularity found in the order impugned.

10. As far as the decision cited supra (1) is concerned, it is in respect of different context of permitting the petitioner /defendant to take inconsistent pleas. The Apex court at para - 19 held as follows:

"19. It is equally well-settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new

ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable."

11. In the above decision, it is observed that the plaintiff therein, if does not get prejudiced, the amendment sought for can be permitted. There is no demur in that principle. However, we are concerned with whether the revision petitioner could convince with regard to the provisions laid down under Order-VI Rule-17 CPC. As already been observed that the petitioner has not come up with any plausible explanation for filing amended written statement and hence, the same cannot be allowed at this stage. Therefore, the civil revision petition is devoid of merits and same is **liable** to be dismissed.

12. In the result, the civil revision petition is dismissed by confirming the order dated 28.02.2017 passed by the trial court in IA No.220 of 2017 in OS No.91 of 2016. No costs.

13. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 12.11.2018
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