

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.1845 of 2018

ORDER:

Heard Sri Mohd. Adnan, learned counsel on behalf of Sri Md. Osman Shaheed, learned counsel for the revision petitioner.

Questioning the order dated 19.02.2018 in I.A.No.521 of 2016 in O.P.No.627 of 2011 on the file of XI Additional Chief Judge, City Civil Court at Hyderabad, the present revision is preferred by respondent No.1 in the said I.A.

For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the I.A.

What all the learned counsel would submit is that the Court below cannot grant the relief of amending the pleading after the commencement of trial. In fact, the learned counsel has pointed out that respondent No.1 sold away the vehicle that was involved in the accident to respondent No.3, who was later impleaded, and subsequent thereto, a memo, dated 16.10.2014, was filed at the appropriate stage by respondent No.1 that he does not want to lead any evidence, since no relief was sought for against him after impleading the subsequent purchaser and amendment was carried out and even the insurance company – respondent No.2 has given a suggestion to PW.2 that the driver of the vehicle is the owner of the vehicle. But, subsequently, when the impugned order was passed, the doors of respondent No.1 with regard to his right to lead evidence are

shut and, thus, miscarriage of justice would occasion, in case the order is sustained. It is also one of the submissions of the learned counsel that it is for the subsequent purchaser to get the transfer endorsed once he parted with the consideration for purchasing or acquiring the vehicle. The learned counsel would also submit that the vehicle was sold away even prior to occurrence of the accident. He placed reliance in **J. Samuel and others v. Gattu Mahesh and others**¹ and **Vidyabai and others v. Padmalatha and another**² for the proposition that under Order VI Rule 17 of the Code of Civil Procedure (for short, 'the Code'), no amendment to the pleading is permissible where the trial is commenced, except where the jurisdictional issue is involved, as it puts an embargo on exercise of the Court's jurisdiction.

In the present case, as could be seen from the order under challenge, the Court below observed that the amendment sought for by the petitioners would not amount to adding any new facts and, on the other hand, amendment amounts to restoring to the original position of the prayer. It also observed that since the petitioners by way of proposed amendment are not adding any new facts and, on the other hand, they want to delete the added portion of the prayer, and allowing the petition would not amount to adding any new facts to the case. Further, in view of the facts and circumstances of the case, the Court below observed that the authorities relied on by respondent

¹ (2012) 1 SCR 295

² 2009 (2) SCC 409

No.1 are inapplicable, more particularly, when the petition filed by respondent No.1 in I.A.No.581 of 2015 under Order I Rule 10 (2) of the Code to strike out his name is pending and the petitioners can have a chance to lead evidence.

Learned counsel lastly makes a submission that in case the revision is dismissed, a chance be afforded to respondent No.1, the revision petitioner herein, to participate in the proceedings so as to lead evidence on his side for effective and complete adjudication of the controversy between the parties.

In fact, there cannot be any rigor in exercising power under Order VI Rule 17 of the Code in the facts and circumstances of each case. The Court can exercise power under the said provision and no authority is needed to refer to in this regard. In the present case, respondent Nos.1 and 2 have been on record. The only disputed question is whether respondent No.1 can be saddled with the liability, either joint or several, in case the claim petition is allowed, overlooking respondent No.3, who is the purchaser even prior to taking place of the accident. The same can be resolved by the Court below, keeping in view, the evidence that would be let in by respondent No.1.

Accordingly, the Civil Revision Petition is disposed of directing the learned XI Additional Chief Judge, City Civil Court at Hyderabad, to afford a chance to respondent No.1, the revision petitioner herein, to lead evidence, sidelining the memo, dated 16.10.2014, filed earlier.

Miscellaneous Petitions, if any, pending in the present revision,
stand closed. No order as to costs.

A. SHANKAR NARAYANA, J

20.03.2018

v v

