

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION NO.4494 OF 2016

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India, assailing the order, dated 18.01.2016 passed in I.A.No.1037 of 2009 in O.S.No.190 of 2007 on the file of the III Senior Civil Judge, City Civil Court at Secunderabad.

2. Heard the learned counsel for both parties.

3. The facts leading to filing of the present revision are briefly as follows:

The petitioner-plaintiff filed the above interlocutory application under Order VI Rule 17 CPC seeking to amend the cause title. The respondent-defendant filed counter *inter alia* contending that at the belated stage, the petition is not maintainable. The trial Court after affording reasonable opportunity to both parties, dismissed the application. Hence, this revision.

4. The point for consideration is whether there is any illegality, irregularity or impropriety in the impugned order?

5. To substantiate the arguments, learned counsel for the petitioner drawn attention of this Court to the decision reported in **SREEMAT PANDEY AND OTHERS V PRADEEP JAIN AND OTHERS**¹, wherein it was held thus (paras 18,23 and 24):

“18. In *Revajeetu Builders & Developers v Narayanaswamy and sons and others* ((2009) 10 SCC 84) relied upon by the learned counsel for the respondents, the Hon'ble Supreme Court while dealing with the question regarding grant or refusal of the amendments by the court exercising its

¹ 2015 (2) CDR 663 (Raj.)

discretionary power, summarized the basic principles governing the amendment of the pleadings, as under:

"63. 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 changes the 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.

64. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments/and should never permit mala fide, worthless and/or dishonest amendments."

23. Thus, the legal position settled by the Hon'ble Apex Court as above, makes it abundantly clear that the Order VI Rule 17 as it was existing prior to the amendment of Civil Procedure Code, (Amendment) Act, 2002 empowers the court to allow either party to alter or amend his pleadings at any stage of the proceedings on such terms as deemed fit by the court. Of course, the amendment of the pleadings which alter materially or substitute the cause of the action or the nature of the suit cannot be allowed. The pre trial amendments are allowed more liberally than those which are sought to be made after commencement of the trial or after conclusion thereof. The amendment sought for cannot be rejected solely on the ground of delay and if it is found that for deciding the real controversy between the parties, it is necessary even the amendment prayed for belatedly, can be allowed on payment of costs. Normally, the right to relief must be judged by reference to the date of suit or legal proceedings were instituted. However, the discretion vested in the court to allow the amendment of the pleadings at any stage of the trial or

even at the appellate stage has to be exercised judicially. Whether an amendment is to be allowed in a particular case or not has to be decided by the court after examining the facts and circumstances of the case in their entirety.

24. Adverting to the facts of the present case, it is to be noticed that the title of the suit as mentioned in the plaint submitted, does not reflect that the suit has been filed on behalf of the firm but then, in para No. 1, the petitioner while giving the details of the firm of the partners and specifying their share therein, it has been specifically averred that Mr. Pradeep Jain being partner of the firm is entitled to file the suit in the name and style of the firm. Further, in para No. 2, it is mentioned that the plaintiff-firm was awarded the contract dated 4.5.92 for operating the Bumper Boats and Pedal Boats at Sukhadia Circle for entertaining the children. The averments made in the plaint have been verified by Mr. Pradeep Jain in the capacity of the partner of the firm M/s. G.B. & Sons. It is true that in conformity with the averments made in para No. 1 of the plaint, the name of the firm should have been mentioned in the title of the suit but then, a bare reading of the averments made in the plaint, makes it abundantly clear that the suit was intended to be filed on behalf of the firm and not by Mr. Pradeep Jain in his individual capacity as partner of the firm.”

6. Let me consider the facts of the case on hand in view of the above legal position. The petitioner filed O.S.No.190 of 2007 against the respondent for recovery of an amount of Rs.9,35,570/- with interest at the rate of 18% p.a. from the date of suit till the date of realization. The respondent filed written statement denying the averments made in the plaint *inter alia* contending that the suit as framed is not maintainable under law. The defendant has taken a specific plea that the description of the defendant is not correctly mentioned in the paint. During the pendency of the suit, the petitioner filed the above interlocutory application under Order VI Rule 17 CPC seeking to amend the cause title of the suit.

7. This Court carefully perused the plaint copy, wherein the description of the defendant is mentioned as Shaik Ahmed, s/o Shaik Basheer, aged 56 years, occupation: business partner of M/s Sab Overseas, Mandi Bazaar, Warangal.

8. This Court carefully perused the plaint, more particularly sub-paras 'd' and 'e' of para III. A perusal of the plaint *prima facie* reveals that the plaintiff filed the suit for recovery of money from M/s Sab Overseas, a partnership firm. By inadvertently, the plaintiff has not correctly mentioned the description of the defendant.

9. While deciding the petitions filed under Order VI Rule 17 CPC, the Court has to consider whether the proposed amendment will take away right, if any, vested in favour of the defendant. At the same time, the Court has to consider whether the proposed amendment will alter the nature of the suit or cause of action. In the instant case, the suit was filed for recovery of money. Even if the amendment is allowed, the same may not alter the nature of the suit as well as cause of action. The Court shall not insist on technicalities at the cost of substantial justice. Ultimately, the Court has to render substantial justice to the parties. In the instant case, if the application is not allowed, it may cause untold hardship to the petitioners. Even if the application is allowed, the same may not cause any prejudice to the respondent. Ultimately, the plaintiff has to establish that he is entitled to recover the suit amount from M/s Sab Overseas in which, Shaik Ahmed Mohd is one of the partners. A perusal of the record reveals that by inadvertently, the plaintiff has not mentioned the description of the defendant in a correct manner. Simply because, the plaintiff did not correctly mention the description of the defendant, that itself is not a valid ground to dismiss the application filed under Order VI Rule 17 CPC. The facts of the case on hand are almost identical to the facts of the case cited *supra*. The trial Court has not considered the vital

aspects as well as scope of Order VI Rule 17 CPC and dismissed the petition on the sole ground of delay. If the order of the trial Court is allowed to stand, certainly it would amount to mis-carriage of justice.

10. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that it is a fit case to allow the revision.

11. Accordingly, the Civil Revision Petition is allowed setting aside the order, dated 18.01.2016 passed in I.A.No.1037 of 2009 in O.S.No.190 of 2007 on the file of the III Senior Civil Judge, City Civil Court at Secunderabad and consequently, I.A.No.1037 of 2009 is allowed permitting the petitioner to amend the cause title of the suit on payment of costs of Rs.3,000/- to the respondent. No order as to costs. Miscellaneous petitions, if any pending, in this Civil Revision Petition shall stand closed.

DATED: 19-09-2018.

Hsd

T.SUNIL CHOWDARY, J