

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

**CIVIL REVISION PETITION NOs.3708, 6156, 6159, 6210, 6211, 6228, 6230,
6346, 6347, 6351 & 6423 OF 2016**

AND

**CIVIL REVISION PETITION NOs.3, 34, 35, 1784, 1792, 1798, 1802, 1819,
1845 of 2017**

COMMON ORDER:

In all these civil revision petitions filed under Article 227 of the Constitution of India, the parties are one and the same, the affidavit filed along with the petitions and the nature of relief claimed in the main suits is also one and the same. Therefore, I find that it is expedient to decide all these civil revision petitions by common order.

For the sake of convenience, the parties will hereinafter be referred as they were arrayed before the Trial Court.

All these civil revision petitions mentioned in Column (C) are filed challenging the orders in Interlocutory Applications mentioned in Column (A), passed by the Principal Senior Civil Judge, Narasaraopet. The details of I.As, O.Ss and C.R.Ps are given hereunder in Column Nos. 'A', 'B' & 'C' respectively.

S.No	COLUMN (A)	COLUMN (B)	COLUMN (C)
1	I.A.No.282/2016 in	O.S.No.411/2015 in	C.R.P.No.3708/2016
2	I.A.No.243/2016 in	O.S.No.473/2015 in	C.R.P.No.6156/2016
3	I.A.No.249/2016 in	O.S.No.423/2015 in	C.R.P.No.6159/2016
4	I.A.No.237/2016 in	O.S.No.413/2015 in	C.R.P.No.6210/2016
5	I.A.No.283/2016 in	O.S.No.467/2015 in	C.R.P.No.6211/2016
6	I.A.No.258/2016 in	O.S.No.469/2015 in	C.R.P.No.6228/2016
7	I.A.No.259/2016 in	O.S.No.471/2015 in	C.R.P.No.6230/2016
8	I.A.No.241/2016 in	O.S.No.439/2015 in	C.R.P.No.6346/2016
9	I.A.No.250/2016 in	O.S.No.425/2015 in	C.R.P.No.6347/2016
10	I.A.No.284/2016 in	O.S.No.475/2015 in	C.R.P.No.6351/2016
11	I.A.No.240/2016 in	O.S.No.437/2015 in	C.R.P.No.6423/2016
12	I.A.No.245/2016 in	O.S.No.481/2015 in	C.R.P.No.3/2017
13	I.A.No.244/2016 in	O.S.No.479/2015 in	C.R.P.No.34/2017
14	I.A.No.252/2016 in	O.S.No.429/2015 in	C.R.P.No.35/2017
15	I.A.No.251/2016 in	O.S.No.427/2015 in	C.R.P.No.1784/2017
16	I.A.No.242/2016 in	O.S.No.441/2015 in	C.R.P.No.1792/2017

17	I.A.No.348/2016 in	O.S.No.485/2015 in	C.R.P.No.1798/2017
18	I.A.No.248/2016 in	O.S.No.417/2015 in	C.R.P.No.1802/2017
19	I.A.No.238/2016 in	O.S.No.433/2015 in	C.R.P.No.1819/2017
20	I.A.No.239/2016 in	O.S.No.435/2015 in	C.R.P.No.1845/2017

All the interlocutory applications mentioned in Column 'A' before the Court below were filed by the State Bank of India/petitioner/plaintiff against the respondents 1 to 4 seeking amendment of the plaint under Order VI Rule 17 & Section 151 C.P.C. Before the Trial Court, the first respondent/defendant varied from case-to-case and the respondents 2 to 4 were the proposed defendants, viz., Sri Vijaya Ganapathi Cold Storage Private Limited (R-2), its Managing Director Sri P. Narayana Murthy (R-3), Director P. Sailaja (R-4).

Since the claim in all these interlocutory applications is based on the same allegations made in the affidavits filed along with these petitions, the allegations made in I.A.No.282 of 2016 in O.S.No.411 of 2015 in C.R.P.No.3708 of 2016 is considered as an illustration.

C.R.P.No.3708 of 2016

The Affidavit filed by the petitioner/plaintiff in O.S.No.411 of 2015 is extracted hereunder:

"I, S.S.K. Bala Subrahmanyam S/o S. Gouri shankar, Hindu, aged about 42 years, working as Branch Manager of petitioner/plaintiff bank, Branch at Edlapadu, Edlapadu Mandal, Guntur District do hereby solemnly affirm and state on oath as follows:

I am the petitioner herein and working as Branch Manager of the petitioner/plaintiff bank. As such I am well acquainted with the facts of the case.

I respectfully submits that at the time of preparing the Plaint some other documents pertaining to this respondent/defendant were

mixed up with another borrowers loan documents to which some mistakes were happened at the time of preparation of the plaint. The same were detected recently and hence I am advised to file the subject application to permit me to amend the plaint as mentioned in the memo of proposed amendment.

Hence I pray that the Hon'ble Court may be pleased to permit me to amend the plaint suitably as mentioned in the memo of proposed amendment enabling me to carryout consequential amendment in the plaint suitably and to pass appropriate orders otherwise the petitioner/plaintiff bank put to irreparable loss which cannot be compensated in terms of money.

Be pleased to consider.

(S.S.K. Bala Subrahmanyam)
Deponent"

The petitioner/plaintiff who is State Bank of India, represented by its Branch Manager, Edlapadu, Guntur District, filed O.S.No.411 of 2015 for recovery of money based on loan agreement, allegedly executed by the first defendant. Thereafter, filed I.A.No.282 of 2016 under Order VI Rule 17 r/w Section 151 C.P.C seeking leave of the Court to amend the plaint suitably, as mentioned in the memo of proposed amendment enabling the petitioner/plaintiff to make consequential amendments in the plaint suitably and to add respondents 2 to 4 viz., Sri Vijaya Ganapathi Cold Storage Private Limited (R-2), its Managing Director Sri P. Narayana Murthy (R-3), Director P. Sailaja (R-4) as proposed defendants in the cause-title and to add certain provisions of Civil Procedure Code in the plaint, more particularly, Order XXXIV C.P.C along with Order XXVI and Rules 1 & 2 C.P.C.

The amendment is running into three pages and the plaintiff wanted to convert simple suit for recovery into a suit for mortgage. But, basis for claiming such relief is that, at the time of preparing plaint, the documents pertaining to mortgage were mixed with

another borrower's documents and due to said mix up at the time of preparation of plaint, the plaint was filed for simple recovery of money and that those documents were traced recently. Hence, the plaintiff/Bank filed I.A.No.282 of 2016 to amend the plaint to covert suit for simple recovery of money into suit based on mortgage.

The deponent Sri S.S.K. Bala Subrahmanyam, Manager of State Bank of India, Edlapadu signed affidavit in I.A.No.282 of 2016 in O.S.No.411 of 2015 on 05.02.2016.

The first respondent filed counter denying material allegations, *inter alia*, contending that the affidavit is not clear and no details were given. In the absence of details, suit for simple recovery of money cannot be stretched into a suit based on mortgage which totally changes the nature of the suit and the proposed amendment directly amounts to conversion of suit for recovery into suit based on mortgage and that the plaintiff did not make any endeavour and failed to exercise due diligence at the time of filing the suit. Therefore, such amendment cannot be allowed at this stage. It is also contended that, the proposed amendment changes the nature of the suit and cause of action. The petitioner did not assign cogent reasons for failure to bring those facts on record before commencement of trial and there are no *bonafides* in filing the petition, and finally requested to dismiss I.A.No.282 of 2016.

Respondents 2 to 4 filed common counter alleging that, the petitioner/plaintiff is not entitled to seek amendment without impleading them as proposed parties to the suit. The ground for failure to amend the plaint mentioned in the affidavit filed along with the plaint is absolutely false and devoid of truth. The alleged

mixing of documents with other documents is nothing but callousness on the part of the employees of the bank and in the absence of any details, I.A.No.282 of 2016 cannot be allowed as a matter of routine. It is further contended that the affidavit does not disclose as to how the cause of action arose against respondents 2 to 4 by way of proposed amendment without impleading respondents 2 to 4, no prior notice was issued before filing the suit and prayed to dismiss I.A.No.282 of 2016 finally.

The petitioners before this Court are respondents 2 to 4 who were added by way of amendment of pleading as per order of Court below in I.A.No.282 of 2016 by exercising power under Order VI Rule 17 C.P.C, without impleading them as parties to the suit. The grounds urged by these petitioners/respondents 2 to 4 before this Court are specific.

- a) In I.A.No.282 of 2016 which is filed under Order VI Rule 17 C.P.C, the petitioners herein/proposed respondents 2 to 4 cannot be impleaded as parties without impleading them as parties to the suit.
- b) The allegations made in the affidavit by responsible officer/Manager of the Bank/plaintiff are nothing but casual and the way in which they dealt with the matter clearly shows that they are totally negligent in prosecuting the suit.

Further, filing I.A.No.282 of 2016 to convert simple suit for recovery of money based on loan agreement into suit based on mortgage, creating a charge over the immovable property is impermissible. But, the Trial Court did not consider any of the contentions urged by these petitioners and passed a cryptic order and requested to set-aside the order passed by the Court below, whereby, leave was granted to amend the plaint, converting the

suit for recovery based on loan agreement into a suit based on mortgage, creating a charge over the immovable property and such order cannot be sustained under law.

During hearing, learned counsel for the petitioners Sri Challa Gunaranjan contended that, when a suit is filed against the first defendant and the petitioners herein/respondents 2 to 4 are found proper or necessary parties to the suit, the petitioners herein have to follow the procedure prescribed under Order I Rule 10(2) C.P.C, and they cannot be impleaded straightaway invoking Order VI Rule 17 C.P.C. Further, it is contended that, amendment of plaint would arise without impleading these petitioners as defendants, converting the suit for loan agreement into a suit based on mortgage, creating a charge over the immovable property is a grave illegality committed by the Trial Court and the Senior Civil Judge's Court is presided by a sufficiently Senior Officer, but, without even advertng to the allegations made in the affidavit and cause shown for filing the petition and the consequences which flow from such order, the Court below passed such cryptic order which is unsustainable under law and requested to set-aside the order passed by the Trial Court. Further, learned counsel for the petitioners relied on judgment of this Court in **Sogra Begum v. Ghousia Begum and others**¹.

Whereas, Sri M. Srikanth Reddy, learned counsel for the respondents contended that, when the suit is filed for converting the suit for recovery of money based on loan agreement into a suit based on mortgage, it is nothing but claiming charge over the property, mortgage with the bank by these defendants as a security for recovery of amount borrowed by the first

¹ 2017 (5) ALD 122

defendant/first respondent, that does not amount to change of structure and nature of the suit and such amendment can be permitted at any stage, subject to the other conditions under Order VI Rule 17 C.P.C.

It is also contended that, when the petitioners herein are the proper and necessary parties, the Court may exercise such power to implead them either on its own motion or on any application of either of the parties to the suit or on the application of third party who is proposed to come on record as a party. Even in the absence of any application of Order I Rule 10 C.P.C, exercise of power by the Trial Court and impleading respondents 2 to 4 as parties cannot be faulted. Therefore, the Trial Court rightly exercised its power under Order I Rule 10(2) C.P.C and recorded a finding that these petitioners are proper and necessary parties to the suit, thereby, the order cannot be set-aside, on the ground that the petitioners herein/respondents 2 to 4 were not impleaded by filing a petition under Order I Rule 10(2) C.P.C.

It is further contended that, when the plaintiff/Bank lent amount to various persons, which is the public money and based on technicalities, the suit claim of the petitioner herein/plaintiff/bank cannot be dismissed and the learned counsel placed reliance on the judgment of the **Union Bank of India v. Naresh Kumar and others², Bhanu constructions Co. Ltd v. Recovery Officer, Debts Recovery Tribunal, Hyderabad³ and J. Kumaradasan Nair and another v. Iric Sohan and others⁴** and based on the principles laid down in the above judgments, learned counsel for the petitioner requested to dismiss the civil revision

² AIR 1997 SUPREME COURT 3

³ 2010 (3) ALD 57 (DB)

⁴ (2009) 12 Supreme Court Cases 175

petition, as failure to implead the petitioners herein as defendants 2 to 4 by invoking Order I Rule 10(2) C.P.C is purely a technical flaw and on that ground, the petition filed under Order VI Rule 17 C.P.C cannot be dismissed.

Considering rival contentions, perusing the material available on record, the points that arise for consideration are as follows:

- 1. Whether a simple suit for money based on loan agreement allegedly executed by second respondent be converted into a suit based on mortgage, claiming charge over the property by invoking Order VI Rule 17 C.P.C?***
- 2. Whether addition of the petitioners herein as defendants 2 to 4 without filing an application under Order I Rule 10 C.P.C, invoking Order VI Rule 17 C.P.C is illegal. If not, whether the order passed by the Principal Senior Civil Judge, Narasaraopet is sustainable under law?***

P O I N T NO.1

The first and foremost contention raised before the Trial Court and this Court is that, suit for simple mortgage cannot be converted into suit based on mortgage. It is an undisputed fact that the plaintiff/Bank filed suit for recovery of money based on loan agreement and later filed petition under Order VI Rule 17 C.P.C, seeking leave of the Court to amend the plaint. The proposed amendment is inclusive of conversion of simple suit for money based on loan agreement into suit based on mortgage, allegedly created by these petitioners who are not parties to the suit when plaint was filed. The proposed amendment also includes addition of parties/petitioners herein as defendant nos. 2 to 4.

Before adverting to the other contentions regarding legality of amendment, without impleading these petitioners as defendants, invoking Order I Rule 10(2) C.P.C, it is appropriate to advert to the law declared by the Apex Court and other Courts for amendment of pleadings.

In **Rameshkumar Aggarwal v. Rajamala Exports Private Limited and others**⁵, the Apex Court relying on **Revajeetu Builders and Developers v. Narayanaswamy & Sons and others**⁶, 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 changes 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

⁵ AIR 2012 SC 1887

⁶ 2009(8) SCJ 401

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."

Similarly, in **Rajkumar Guruwara (dead) through LRs v. S.K. Sarwagi and Company Private Limited and another**⁷, the Apex Court laid down the following conditions to grant application for amendment subject to certain conditions:

- (i) when the nature of it is changed by permitting amendment;
- (ii) when the amendment would result in introducing new cause of action and intends to prejudice the other party;
- (iii) when allowing amendment application defeats the law of limitation.

Thus, in view of the law declared by the Apex Court in various judgments referred supra, delay by itself is not a ground. Undoubtedly, delay is not a ground, but it is subject to the limitation contained under proviso to Order VI Rule 17 C.P.C.

But, none of the judgments deal with conversion of suit of recovery of money into suit based on mortgage.

⁷ (2008) 14 Supreme Court Cases 364

In **J. Vijayakumar v. K. Srinivasan**⁸, High Court of Madras decided a similar issue. It is appropriate to note the facts of the case, in view of importance of the question involved in this matter. plaintiff filed a suit for recovery of money due on promissory note and also creation of equitable mortgage. At the time of filing suit, even though the revision petitioner has mentioned all the pleadings in respect of creation of equitable mortgage in the body of the plaint, but in the prayer column of the plaint, no specific prayer for preliminary decree for recovery of mortgage money has been mentioned. So the revision petitioner/plaintiff has filed an application in I.A.No.15334 of 2008 for amending the plaint. The amendment sought for by the revision petitioner does not constitute any new cause of action. But the trial Court without considering the same, dismissed the application, against which, the present revision petition has been preferred by the plaintiff/revision petitioner. It was further submitted by the learned counsel for the revision petitioner/plaintiff that in the plaint itself, the revision petitioner has specifically stated that this is the suit for mortgage, but he has filed the suit under Section 34 C.P.C. instead of filing under Order XXXIX C.P.C., which deals with the suit for mortgage. The misquoting of provision of law is not a ground for dismissal. To substantiate his arguments, he relied upon the decision of the Apex Court reported in **Abdul Rehman and another v. Mohd. Ruldu and others**⁹, wherein it has been held that the amendment, which is necessary, for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. Hence, he prayed for allowing the revision petition.

⁸ CRP No.118 of 2010 dated 23.11.2015

⁹ CDJ 2012 SC 667

Further, learned counsel for the respondent/defendant therein submitted that the revision petitioner/plaintiff has filed a simple suit for recovery of money due on promissory note. If the suit is for mortgage, he has to file the suit under Order XXXIX C.P.C. instead of Section 34 C.P.C. The second limb of argument is that the suit has been filed on 02.01.2008, the amendment application was filed only on 29.08.2008 and deposit of title deeds on 03.01.1996. So the plaintiff ought to have filed the amendment application on or before 02.01.2008. It shows that on the date of filing amendment application, the prayer has been barred by limitation. To substantiate his argument, he relied upon the decision of the Apex Court reported in **K.Raheja Constructions Ltd. And another v. Alliance Ministries and others**¹⁰, which has been followed by the Apex Court in another judgment reported in **Voltas Limited v. Rolta India Limited**¹¹ and the same has been followed by this Court in **S.Kuppusamy v. P.K.Subramani and others**¹². Therefore, he prayed for dismissal of the revision petition.

Upon, hearing both sides, the High Court of Madras held as follows:

“As already stated that in the body of the plaint, creation of equitable mortgage has been mentioned, but in the prayer column only, it was not mentioned. In view of the same, amendment sought for is not barred by limitation. Considering the aforesaid facts and circumstances of the case along with the decisions, I am of the view, the trial Court without considering the above aspects erroneously dismissed the application. But there is a lapse on the part of the revision petitioner/plaintiff and that should be compensated by payment of costs to the respondent, who has been forced to contest both in the trial Court and this Court. Accordingly, this Civil Revision Petition stands allowed on payment of costs of Rs.10,000/- to the respondent/defendant. the Civil Revision Petition stands allowed on payment of costs of Rs.10,000/- (Rupees Ten thousand only) to the respondent/defendant, on or before 14.12.2015, failing which, the Civil Revision Petition shall stand dismissed”

¹⁰ 1995 Supp (3) SCC 17

¹¹ (2014) 4 SCC 516

¹² 2005 (4) CTC 734

The facts of the present case are distinguishable from the facts of the judgment referred supra. In the case on hand, suit was filed only for recovery for money based on loan agreement, but later, on the ground that the security created by these petitioners, the documents were misplaced and later traced and therefore, they filed petition for amendment of plaint. The suit for simple recovery of money based on loan agreement is purely governed by the provisions of Contract Act, Negotiable Instruments Act, subject to the documents sued upon, but, whereas the suit for mortgage is governed by the provisions of Transfer of Property Act. The form of the plaint in suit for recovery of money based on loan agreement of mortgage is distinct. In the suit for simple recovery of money, a money decree is to be passed, but whereas in the suit for mortgage, since charge was created, a preliminary decree has to be passed granting time for redemption. In the event of failure to pay the debt within the time prescribed in the preliminary decree, a final decree has to be passed on application made by the plaintiff and the rights of the parties in a suit for mortgage i.e. mortgagee and mortgagor are totally distinct from the rights of the party in a suit for recovery of money simplicitor. Though the suits are for recovery of money, to claim preferential right in a suit for mortgage, based on facts of each, therefore, conversion of a suit for simple recovery of money into a suit for mortgage is impermissible. But, the suit for recovery of money based on mortgage is not barred by limitation as on the date of filing a petition under Order VI Rule 17 C.P.C, in view of the law laid down by the Apex Court in **Rameshkumar Aggarwal v. Rajamala Exports Private Limited and others** (referred supra). When a fresh suit is not barred by

limitation for the relief claimed in a petition filed under Order VI Rule 17 C.P.C, the Court can permit the parties to amend the pleadings. But, at the same time, in the same judgment, the Supreme Court was of the view that the Court cannot permit amendment which changes the structure or nature of the suit.

In the present facts of the case, as stated above, the proposed amendment is only to convert the suit for money into suit based on mortgage, but the prime relief is recovery of money. That too, in the plaint itself there is a reference about creation of security for the debt due to the plaintiff/bank. Though the facts in the judgment of Madras High Court are not totally identical, they are substantially one and the same.

In **Chinnapareddy Subba Reddy v. Chinnapareddy Srinu**¹³, this Court had an occasion to deal with a petition for amendment for conversion of suit from injunction simplicitor into suit for recovery possession, wherein, this Court by placing reliance on the judgment of the Apex Court in **Sampath Kumar v. Ayyakannu**¹⁴ permitted such conversion, holding that it would not amount to change the nature of the suit.

If, the principle laid down in the judgment referred in above judgment, including **Revajeetu Builders and Developers v. Narayanaswamy & Sons and others** (referred supra), conversion of suit for simple recovery of money into a suit based on mortgage can be permitted, since the prime relief is recovery of amount. Therefore, such amendment can be allowed granting permission to amend the plaint mainly to avoid multiplicity of the proceedings and to do complete justice to the parties. That too, the plaintiff is public sector bank, though its officials acted in such a callous

¹³ CRP No.1773 of 2012 dated 01.11.2012

¹⁴ AIR 2002 SC 3369

manner, the bank cannot be put to any sufferance, as it is dealing with the public money.

In **Union Bank of India v. Naresh Kumar and others** (referred supra) the Supreme Court in paragraphs 9 & 10 held that, "In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order VI Rule 14 of the Code of Civil Procedure a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order XXIX Rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by and against a corporation the Secretary or any Director or other Principal officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order VI Rule 14 together with Order XXIX Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors Order 29 Rule 1 of the Code of Civil Procedure, as a company

is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a Corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The Court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer.”

Similarly, in **Bhanu constructions Co. Ltd v. Recovery Officer, Debts Recovery Tribunal, Hyderabad** (referred supra), the Division Bench of this Court held that, “Thus, not only Tribunals and Appellate Tribunals, even this Court should also try to see that the defaulters, who are trying to avoid or delay repayment of money borrowed from banks and financial institutions, which are by and large public institutions dealing with public money, are not given any assistance on the ground that some procedural law was not strictly followed in the matter of recovery of the amount payable by the defaulters. This Court is conscious about the afore-stated fact and accordingly, this Court will have to decide whether the recovery certificate should have been transferred to a Tribunal which had been established after

issuance of recovery certificate for the purpose of recovery of the amount. It is not in dispute that the recovery certificate for Rs.44,06,30,954.79p., was issued on 30.10.2000 by Debts Recovery Tribunal, Hyderabad and at that time Debts Recovery Tribunal, Visakhapatnam was not in existence. In the circumstances, the amount referred to in the recovery certificate could have been recovered by respondent No.1 i.e. Recovery Officer of Debts Recovery Tribunal, Hyderabad.”

In view of the law declared by the Apex Court and this Court in the judgments referred supra, it is the duty of the Courts to protect the substantial rights of the parties i.e. either bank or an individual on a technical ground, more particularly on account of sheer negligence exhibited by the bank officials, the claim of the plaintiff/bank which is a public sector bank dealing with public money cannot be defeated and it is for the authorities concerned to take appropriate action against the officials who exhibited their negligence in prosecuting the proceedings in a Court of law without detriment to the interest of the depositors i.e public money.

In view of my foregoing discussion, I find that conversion of suit for simple recovery of money based on loan agreement into a suit based on mortgage claiming charge over the property does not amount to change of structure or nature of the suit or cause of action, since the main relief is for recovery of money only. Even if the suit is converted, it would not change the prime relief claimed in the suit. Therefore, such conversion can be permitted by granting leave to the plaintiff to amend the pleadings appropriately. Accordingly, the point is answered in favour of the respondent No.1/Bank and against the petitioners.

P O I N T N O . 2

The main ground urged in the revision petition is that, these petitioners were not impleaded as parties to the suit and the plaint was initially filed against the second respondent only, as if he borrowed the amount and executed necessary documents. But, a reference was made that security was created for due payment of the debt. But, that allegation is too vague.

When a suit is filed against the second respondent alone and the bank intended to proceed against the third party, being the *Dominus Litus*, appropriate procedure prescribed under the Civil Procedure Code has to be followed.

Order I Rule 10(2) C.P.C deals with adding or striking out parties by the Court and according to it, the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

Order I Rule 10(4) C.P.C, where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

Therefore, the suit is filed against the second respondent alone, initially and when the bank intended to proceed against these petitioners, the procedure contemplated under Order I Rule 10 C.P.C has to be strictly adhered to and before impleading these petitioners as parties, an opportunity shall be given to the respondents by serving notice on the implead application and only after hearing both the parties, the Court has to pass appropriate order, if the Court finds that they are proper or necessary parties in a suit and for complete and effective adjudication of the dispute, the Court may pass an order impleading the parties/petitioners. Therefore, an opportunity shall be given to these petitioners before impleading them as parties, but, by filing application under Order VI Rule 17 C.P.C, the petitioners cannot be impleaded as parties. But, more curiously, the learned Senior Civil Judge, who is a Senior Officer, passed the cryptic order running into ten lines, without advertent to the contentions and provisions of Civil Procedure Code. The order passed by the Principal Senior Civil Judge, Narasaraopet is extracted hereunder for better appreciation of the case:

“POINT:

6. The petitioner is contending that the guarantors were not added in the plaint due to some mistake as some of the documents of the loan were mixed with other borrower's loan file. Therefore, it is necessary to prove its case the guarantors of the loan has to be brought on record. The suit is based upon the loan sanctioned by the plaintiff bank. As per the documents of the petitioner, there are guarantors for the loan amount. Hence, they are necessary parties for the complete disposal of the suit dispute. Hence, the petition is allowed permitting the petitioner to amend the plaint as prayed for.”

The purport of the order passed by the Principal Senior Civil Judge is that the Presiding Officer is conscious about necessity to implead guarantors, but ignored the procedure to be followed to implead the third party having found that they are proper and necessary parties to the suit. Consciously, the Presiding Officer appears to have passed this order permitting amendment of the plaint in a most casual manner, which amounts to impleading these petitioners as parties to the suit, which is impermissible under law. Therefore, adding these petitioners in the long cause title and short cause title of the plaint is vitiated by serious irregularity.

To implead a third party, during pendency of the proceedings, the procedure prescribed under Order I Rule 10(2) C.P.C is to be strictly adhered to and also Rule 28 of Civil Rules of Practice. If, these petitioners are invoking procedure under Order I Rule 10(2) C.P.C, necessary consequential amendment has to be made in the plaint. In case, no consequential amendment is made, such petition has to be rejected, in view of the language used in Rule 28 of the Civil Rules of Practice.

Another fallacy in these proceedings is that, the relief claimed in the plaint originally is for recovery of amount based on loan agreement. But, now, based on security created for due payment of the amount borrowed by the second respondent, the plaintiff intended to convert the suit for recovery of amount into suit based on mortgage. Unless these petitioners are impleaded, the amendment petition cannot be allowed. As long as these petitioners are not impleaded by following due procedure under Order I Rule 10 C.P.C, amendment cannot be allowed. Therefore, the order passed in I.A.No.243 of 2016 in O.S.No.473 of 2015

passed by the Principal Senior Civil Judge, Narasaraopet is illegal and irregular and it is liable to be set-aside.

Similarly, the order passed in all the interlocutory applications mentioned in Column 'A' are also set-side.

The law is applicable to the common litigant public, the same law is applicable to the plaintiff/bank also. But, still, in view of the law declared by the Apex Court, based on technicalities, the claim of the parties cannot be thrown out, since the plaintiff/bank is dealing with public money. Therefore, I find that it is a fit case to set-aside the order passed by the Trial Court in I.As mentioned in Column 'A' in O.S mentioned in Column 'B' of respective C.R.Ps mentioned in Column 'C', while permitting the first respondent/bank to file appropriate applications under Order I Rule 10(2) C.P.C and on filing such applications, the Court is directed to dispose of applications filed under Order I Rule 10 C.P.C, as well as applications filed under Order VI Rule 17 C.P.C simultaneously, or by a common order, subject to convenience of the Trial Court, so as to meet the ends of justice and follow necessary procedure in accordance with law.

In the result, the civil revision petitions are allowed, setting aside the orders in Interlocutory Applications (Column 'A') in Original Suits (Column 'B') of respective C.R.Ps mentioned in Column 'C', while remanding Interlocutory Applications (Column 'A') in Original Suits (Column 'B') of respective C.R.Ps mentioned in Column 'C' to the Trial Court with a permission to the plaintiff/bank to file appropriate application to implead these petitioners to cure the defects. On filing such applications, the Court below is directed to dispose of the petitions filed under Order I Rule 10 C.P.C and Order VI Rule 17 C.P.C simultaneously

or by common order, subject to convenience and follow necessary procedure.

In the event, the plaintiff/bank does not file applications under Order I Rule 10(2) C.P.C, within a month from the date of this order, the Trial Court is directed to proceed with the applications filed under Order VI Rule 17 C.P.C, in accordance with law, keeping in view the observations made hereinabove.

Consequently, miscellaneous applications pending if any, shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:06.12.2018

SP

