THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

CIVIL REVISION PETITION NOS.2236 AND 2320 OF 2018

C O M M O N O R D E R
(*Per Hon'ble Sri Justice Sanjay Kumar*)

Hyderabad Industries Limited, Hyderabad, the petitioner in these two revisions filed under Article 227 of the Constitution, is the plaintiff in COS No.225 of 2017 on the file of the learned Judge, Commercial Court -cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad (old O.S.No.393 of 2011 on the file of the learned III Additional Chief Judge, City Civil Court, Hyderabad). It filed I.A.No.387 of 2017 therein under Order 1 Rule 10(2) CPC to delete the names of defendants 2, 3 and 4 in the suit. It also filed I.A.No.388 of 2017 under Order 6 Rule 17 CPC to amend the prayer in para VII (i) and (ii) of the plaint. By separate orders dated 07.11.2017, the trial Court dismissed both the I.As. Hence, these revisions.

Heard Sri R.Raghunandan, learned senior counsel appearing for Sri T.Bala Mohan Reddy, learned counsel for the petitioner/plaintiff, Sri R.A.Achuthanand, learned counsel for respondent 3/defendant 3, and Ms.M.Kiranmayee, learned senior standing counsel for Income-tax, appearing for respondents 1 and 5/defendants 1 and 5.

Parties shall hereinafter be referred to as arrayed in the suit.

O.S.No.393 of 2011, which came to be renumbered as COS No.225 of 2017, was filed for a declaration and a perpetual injunction. The original suit prayers therein read as under:

'VII. PRAYER:

The plaintiff, therefore, prays that this Honourable Court may be pleased to grant a judgment and decree as follows:
(i) to grant a decree of declaration, in favour of the plaintiff, declaring the plaintiff as the real and effective owner and possessor of the suit schedule A, B and C properties as that of an agreement

holder being entitled to pay fixed consideration and get the sale deeds registered in the name of the plaintiff from the defendants 2 to 4.

(ii) Consequentially to set aside the orders dated 6.6.2011 of the first defendant in proceedings bearing S.R.No. 198/2010-11 as arbitrary, incorrect and illegal.

(iii) to grant a decree of perpetual injunction, in favour of the plaintiff, restraining the defendant No.1 from selling the suit schedule property, which was attached, under the recovery proceedings for recovery of tax from the defendants 2.

(iii) to award costs.

(iv) any other reliefs as may be deemed fit and proper by this Honourable Court.'

The plaint averments were to the effect that the plaintiff company obtained the property covered by Schedule A in the suit schedule, being an extent of 4,444 square yards, on lease under registered lease deed dated 16.07.1975 from defendant 2. The plaintiff company also obtained the property covered by Schedule B in the suit schedule from Iqbal Alladin, being an extent of 9,575 square yards, under registered lease deed dated 19.07.1975. In addition thereto, the plaintiff company obtained another extent of land admeasuring 9,575 square yards, comprised in Schedule C, from Bilkiz Alladin under registered lease deed dated 19.07.1975. Iqbal Alladin and Bilkiz Alladin are the parents of defendants 2 to 4. After their demise, defendants 2 to 4 became their legal heirs and lease amounts were paid to them. According to the plaintiff company, the lease deeds were also agreements of sale and it had a right of pre-emption thereunder. The plaintiff company claimed that the leases were still subsisting and there was no default on its part in payment of rents. While so, defendant 2, who had fallen in arrears of income-tax in relation to the assessment years 2004-05 to 2008-09, allowed a tax recovery certificate to be drawn up for recovery of his tax dues and defendant 1, the Tax Recovery Officer, initiated recovery proceedings. Attachment was effected by defendant 1 in relation to the suit schedule properties. Having come to know of the same, the plaintiff company filed an objection petition on 12.05.2011 claiming that it was a lessee in possession of the said properties and that it had right and interest over the properties as it was entitled to purchase them in terms of the lease deeds. However, defendant 1 rejected the objection petition of the plaintiff company on 06.06.2011. The plaintiff company further claimed that it issued notice dated 09.06.2011 to defendants 2 to 4 calling upon them to execute sale deeds after receiving the sale consideration. However, there was no response. The plaintiff company stated that in the event of failure on the part of defendants 2 to 4 to comply with their request, separate suits for specific performance would be filed by it. The plaintiff company stated that though no relief had been claimed against defendants 2 to 4 in the present suit, they had been added as proforma parties [in Para III (xii)]. It is in these circumstances that the plaintiff company filed the subject suit with the aforestated prayers.

It is an admitted fact that the plaintiff company thereafter filed O.S.No.2070 of 2011, O.S.No.2071 of 2011 and O.S.No.2072 of 2011 against the defendants on the file of the learned V Junior Civil Judge, City Civil Court, Hyderabad, seeking specific performance in relation to the suit schedule properties and the said suits are pending consideration. While so, defendant 2 filed I.A.No.2248 of 2011 in the present suit under Order 7 Rule 11 CPC seeking rejection of the plaint. By order dated 06.01.2012, the trial Court dismissed the said I.A. leading to C.R.P.No.1141 of 2012 being filed before this Court. The said C.R.P. was disposed of *vide* order dated 08.08.2014. Therein, a learned Judge of this Court took note of the objection of defendant 2 that the suit was barred by Section 293 of the Income-tax Act, 1961, bringing into play Order 7 Rule 11(d) CPC. However, during the pendency of the revision, the plaintiff company filed an application therein seeking permission to amend the plaint in the suit. Thereby, it wanted the following prayer to be substituted.

> 'To grant decree of declaration in favour of the plaintiff holding that the grounds of dismissal of the Plaintiff's objection under Rule 11 of Schedule II to the Income Tax, 1961 are unsustainable and declare the Order passed by the 1st Defendant/Respondent No.2 in S.R. No.198/2010-11 dated 06-06-2011 is illegal and arbitrary and set aside the same.'

The learned Judge thereupon opined that if this amendment was permitted, the very complexion of the suit would undergo a substantial change and after the plaint was amended, defendant 2 could once again review the situation and decide whether or not to take steps to seek rejection of the plaint. The learned Judge further opined that the revisionary Court was not the proper forum for permitting amendment of the plaint and left it open to the plaintiff company to approach the trial Court with a specific application under Order 6 Rule 17 CPC. Opining so, the learned Judge held that the exercise undertaken by defendant 2 to get the plaint rejected virtually became superfluous and disposed of the revision observing thus:

> '8. Therefore, the Civil Revision Petition is disposed of,
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> (a) setting aside the order under revision, treating I.A. No.2248 of 2011 itself as unnecessary for the time being,
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> (b) leaving it open to the 1st respondent, to file an application for amendment of the plaint, within four (4) weeks from today, and
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> (c) directing that in the event of the plaint being amended, it shall be open to the petitioner to decide whether or not to file an application under Order VII Rule 11 CPC and in case an I.A. is filed, it shall be decided on its own merits.'

According to the plaintiff company, it was owing to this order that it chose to file the subject I.As. - (1) seeking amendment of the prayer in the suit, and (2) seeking deletion of defendants 2 to 4 from the array of parties in the suit.

At this stage, it would be appropriate to note the prayer of the plaintiff company in I.A.No.388 of 2017 in COS No.225 of 2017:

> 'For the reasons stated in the accompanying affidavit it is prayed that this Hon'ble Court may be pleased to permit the petitioner/plaintiff company herein to amend the Prayer in Para VII (i) and (ii) in O.S.No.393 of 2011 as "To grant a decree of declaration in favour of the plaintiff holding that the grounds of dismissal of the Plaintiff's objection under Rule 11 of Schedule II to the Income Tax, 1961 are unsustainable and declare the Order passed by the defendant No.1 in S.R.No.198/2010-11 dated 06.06.2011 is illegal and arbitrary and set aside the same," and consequently
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> Existing prayer (iii) in Para 7 may be re-numbered as Para (ii) in Para 7 of O.S.No.393 of 2011 and pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of this case.'

As a consequence to the proposed amendment of its prayer, the plaintiff company also sought deletion of the names of defendants 2 to 4 from the array of parties in the suit under Order 1 Rule 10(2) CPC, by way of I.A.No.387 of 2017 in COS No.225 of 2017.

Perusal of the order dated 07.11.2017 passed by the trial Court in I.A.No.388 of 2017 in COS No.225 of 2017 demonstrates that the trial Court was of the opinion that the amendment sought was equivalent to filling old wine in a new bottle and that the plaintiff company could not exclude its earlier prayers while amending its prayer. The trial Court further observed that the prayer of the plaintiff company had the effect of changing the very complexion of the suit and the same could not be permitted. It is on the strength of this reasoning that the trial Court dismissed the said I.A.

In consequence, the trial Court noted that the original prayer in the suit was for a declaration that defendants 2 to 4 should execute registered sale deeds in the name of the plaintiff company and held that they were necessary parties and not mere proforma parties. On this basis, the trial Court also dismissed I.A.No.387 of 2017 in COS No.225 of 2017, by way of a separate order of the same date.

Sri R.Raghunandan, learned senior counsel, would contend that as the order passed by this Court in C.R.P.No.1141 of 2012 permitted the filing of an application for amendment of the plaint, the trial Court ought to have been more liberal in its approach. Learned senior counsel would further point out that the observation of this Court that the amendment, if permitted, would change the very complexion of the suit was not reason enough for the trial Court to assume that this Court barred changing the complexion of the suit and the trial Court erred in understanding the said observation. Learned senior counsel would state that as independent specific performance suits have already been filed, the existing prayer in the suit with regard to a declaration that the plaintiff company was the real and effective owner and possessor of the suit schedule properties, as an agreement holder, and was entitled to get sale deeds registered in its name by defendants 2 to 4, had become redundant and that was the reason why the plaintiff company wanted to amend its prayer in the suit so that the same would be limited to the income-tax proceedings and the rejection order passed by defendant 1.

On the other hand, Sri R.A.Achuthanand, learned counsel, would contend that permitting the amendment at this stage would seriously prejudice the rights of defendants 2 to 4. He would point out that the plaintiff company, in its wisdom, framed the original prayer in the suit which clearly indicated that it wanted a declaration against defendants 2 to 4 also. He would point out that prayer VII (i) was directed solely against defendants 2 to 4 and had nothing to do with defendants 1 and 5. He would therefore assert that the averment in para III (xii) to the effect that defendants 2 to 4 were added as proforma defendants was contrary to the said suit prayer and had no meaning. He would further state that as the plaintiff company admittedly filed three independent specific performance suits thereafter, the right of the defendants to take a plea therein that the plaintiff company had already filed the subject suit seeking a declaration without consequential relief, would be prejudiced if the plaintiff company is allowed to delete that part of the suit prayer at this late stage.

It is no doubt true that Courts would ordinarily be lenient in permitting amendment of the plaint prior to commencement of the trial but there is no indication in the case on hand as to whether the trial has commenced. However, even at the pre-trial stage, the Court is bound to examine as to whether the defendants in the suit would be prejudiced by allowing the amendment of the plaint as sought.

In SALEM ADVOCATE BAR ASSOCIATION V/s. UNION OF INDIA[1], the Supreme Court observed that the absolute discretion to allow amendment at any stage has been curtailed by the *proviso* to Order 6 Rule 17 CPC. The object, *per* the Supreme Court, is to prevent frivolous applications. To the same effect is the decision in MOHINDER KUMAR MEHRA V/s. ROOP RANI MEHRA[2], wherein the Supreme Court held that the object of the newly inserted Rule 17 in Order 6 is to control filing of applications for amending the pleadings.

Earlier, in RAJESH KUMAR AGGARWAL V/s. K.K.MODI[3], the Supreme Court observed that the object of Order 6 Rule 17 CPC is to see that the Court should try the merits of the case that comes before it and should consequently allow all amendments that may be necessary for determining the real question in controversy between the parties, provided it

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[1] AIR 2005 SC 3353
[2] (2018) 2 SCC 132
[3] (2006) 4 SCC 385

does not cause injustice or prejudice to the other side. On the same lines, in BALDEV SINGH V/s. MANOHAR SINGH[4], it was held that Courts should normally be liberal in granting prayers for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side.

In CHAKRESHWARI CONSTRUCTION PVT. LTD. V/s. MANOHAR LAL[5], the Supreme Court held that if the amendments proposed do not change the nature of the case originally set up by the plaintiff and do not introduce any fresh cause of action, no prejudice is likely to be caused to the defendant, as the defendant would then have an opportunity to make consequential amendment in the written statement to rebut the new facts and therefore, the trial Court ought to have permitted amendment of the plaint. The Supreme Court referred to its earlier judgment in REVAJEETU BUILDERS AND DEVELOPERS V/s. NARAYANASWAMY & SONS[6], wherein the basic principles which have to be taken into consideration while allowing or rejecting an application for amendment were summed up. These principles are as under:

> '(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.'

The Supreme Court observed that the above are some of the important factors which should be kept in mind while dealing with an

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[4] (2006) 6 SCC 498
[5] (2017) 5 SCC 212
[6] (2009) 10 SCC 84

application under Order 6 Rule 17 CPC but they are only illustrative and not exhaustive. On facts, the Supreme Court found that the amendment proposed did not change the nature of the case originally set up and did not introduce any fresh cause of action. Further, the Supreme Court opined that the amendment was relevant to decide the question raised in the suit and no prejudice was likely to be caused to the defendant as the defendant would get an opportunity to make consequential amendment in his written statement and file additional documents in rebuttal of the new facts sought to be introduced by way of the amendment.

It is in the light of the aforestated settled legal position that the case on hand would have to be viewed and considered.

It is an admitted fact that, having sought a declaration as set out in para VII (i) of the suit as originally framed, the plaintiff company filed independent specific performance suits against defendants 2 to 4. As rightly contended by Sri R.A.Achuthanand, learned counsel, the right of the defendants to take advantage of the framing of such a prayer in the present suit while putting forth their defence in the later specific performance suits would be vitally affected if the plaintiff company is now permitted to delete its prayer for a declaration against defendants 2 to 4 as per para VII (i). Further, though the plaintiff company thought it appropriate to seek amendment of the suit prayer, it did not ask for deletion of the original plaint averments which were not limited to its amended prayer against defendant 1. In effect, though defendants 2 to 4 are sought to be eliminated from the picture by deleting the prayer portion in para VII (i) and also their names from the array of parties, the averments made against them in the body of the plaint would remain intact. As rightly pointed out, the observation in para III (xii) to the effect that they are only proforma parties is untenable, given the declaration sought against them in the originally framed para VII (i) of the plaint.

In the light of these facts, we must necessarily hold that allowing the plaintiff company to amend its suit prayer by deleting the original prayer contained in para VII (i) of the plaint and deleting the names of defendants 2 to 4 from the array of parties would invariably prejudice them, as the institution of the subsequent specific performance suits vested in them a right of defence based on the plaint prayer in this suit. That right cannot be prejudiced or adversely affected at this late stage by permitting the plaintiff company to amend its prayer so as to get over its mistakes, if any. That apart, the amendment sought results in deletion of the original suit prayer for a declaration against defendants 2 to 4 and would change the very nature of the suit. Allowing the same would be impermissible in the light of the law laid down in CHAKRESHWARI CONSTRUCTION PVT. LTD[5].

In effect, the order of the trial Court disallowing the plaintiff company's plea to amend the suit prayer does not warrant interference. In consequence, refusal by the trial Court to delete the names of defendants 2 to 4 from the array of parties in the suit also does not warrant interference.

Both the civil revision petitions are therefore devoid of merit and are accordingly dismissed. Pending miscellaneous petitions in both cases shall also stand dismissed. No order as to costs.

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SANJAY KUMAR, J

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M.GANGA RAO, J

26th NOVEMBER, 2018
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