

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2227 OF 2018

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.66 of 2018 in O.S.No.15 of 2013 dated 20.03.2018 passed by the Junior Civil Judge, Sidhout, YSR Kadapa District, dismissing the petition filed under Order VI Rule 17 C.P.C, filed to amend the plaint.

I.A.No.66 of 2018 was dismissed by the Court below on the ground that this petitioner obtained resurvey and settlement register just before filing the petition and the land is classified as gramakantam, but whereas, the second respondent is contending that it is an assigned land.

It is also contended that this petitioner filed I.A.No.124 of 2017 under Order VI Rule 17 C.P.C for amendment of plaint and accordingly the petition was allowed, permitting this petitioner to convert suit for bare injunction into suit for title. But, he could not raise such plea due to lack of knowledge and therefore, sought for permission of the Court to amend the plaint. The second respondent did not oppose the petition, and the Court below dismissed the petition assigning its own reasons.

Order VI Rule 17 C.P.C deals with amendment of pleadings and according to it, 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.

In view of the amendment, it is for the petitioner to prove that despite exercise of due diligence, he could not have raised such plea which is sought to be raised by way of amendment.

The entire affidavit is bereft of any reason as required under proviso to Order VI Rule 17 C.P.C. The petitioner filed the suit initially for injunction simplicitor and later filed an interlocutory application under Order VI Rule 17 C.P.C and the same was allowed, thereby, converted the suit for injunction to title. He did not raise the plea sought to be raised by way of amendment when he filed earlier application and the petition filed before the Trial Court is consequence of collection of certain documents and it is second petition under Order VI Rule 17 C.P.C and the petition is silent as to the exercise of due diligence, which is *sine quo non* for granting permission to amend the plaint by exercising power under Order VI Rule 17 C.P.C, as trial has already been commenced by the date of filing petition.

In **Rameshkumar Agarwal v. Rajmala Exports Private Limited and others**¹, the Apex Court, relying on **Revajeetu**

¹ 2012 (4) AL 1 (SC)

Builders and Developers v. Narayanaswamy & Sons and others²

to decide the scope of proviso to Order VI Rule 17 of C.P.C, held in paragraph nos.10 and 11 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 amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the cases;*
- (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 illustrative and not exhaustive.*

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 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

² 2009 (8) SCJ 401

factum of exercising due diligence depends upon circumstances."

The guidelines mentioned above are only illustrative and not exhaustive while deciding an application under Order VI Rule 17 C.P.C, the Court has to take into consideration the guidelines referred supra and decide an application. These guidelines are only subject to proviso to Order VI Rule 17 C.P.C In such situation, the petitioner is not entitled to claim leave to amend the plaint.

The word "due diligence" is not exactly defined by the Act, but in **Bharat Petroleum Corporation Ltd. v. Precious Finance Investment Pvt. Ltd**³, the Apex Court held as follows:

"The Dictionary meaning of the expression "due diligence" as given in the Blacks Law Dictionary, Sixth Edition, 1990 means "Such a measure of prudence, activity or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case." Similarly the Law Lexicon by P. Ramanatha Aiyer, Second Edition (Reprint) 2001 explains "due diligence" to mean such watchful caution and foresight as the circumstances of the particular case demands. While examining the explanation offered or cause shown as to why in spite of due diligence a party could not have raised the matter before commencement of trial, the Court may have to see the circumstances in which the party is seeking amendment. In short the explanation as to "due diligence" depends upon the particular circumstances and the relative facts of each case to reach a conclusion one way or the other."

In "**Chander Kanta Bansal v. Rajinder Singh Anand**"⁴ the Apex Court while deciding a matter pertaining to amendment of pleadings under Order VI Rule 17 of C.P.C. discussed about the word "due diligence" in paragraph No.16 as follows:

³ 2006 (6) BomCR 510

⁴ (2008) 5 Supreme Court Cases 117

“The words *“due diligence”* has not been defined in the Code. According to Oxford Dictionary (Edition 2006), the word *“diligence”* means careful and persistent application or effort. *“Diligent”* means careful and steady in application to one's work and duties, showing care and effort. As per *Black's Law Dictionary (Eighth Edition)*, *“diligence”* means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. *“Due diligence”* means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to *Words and Phrases by Drain-Dyspnea (Permanent Edition 13A)* *“due diligence”*, in law, means doing everything reasonable, not everything possible. *“Due diligence”* means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs.”

In view of the law declared by the Apex Court in the judgments referred supra, I find no ground to set-aside the order passed by the Court below and on the other hand; it is in accordance with law. Therefore, the civil revision petition is liable to be dismissed at the stage of admission.

In the result, the civil revision petition is dismissed.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:29.06.2018

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