THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.4760 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 29.08.2017 passed in I.A.No.1065 of 2017 in O.S.No.167 of 2011 on the file of XI Additional Chief Judge, City Civil Court, Hyderabad.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that the respondent filed O.S.No.167 of 2011 on the file of XI Additional Chief Judge, City Civil Court, Hyderabad, against the petitioner for specific performance and partition of the suit schedule property. During pendency of the suit, the respondent filed I.A.No.1065 of 2017, under Section 26 of the Specific Relief Act read with Section 151 C.P.C., seeking to amend the plaint and also rectification in the agreement of sale dated 30.06.2003. The petitioner filed a counter opposing the claim of the respondent. The trial Court allowed the petition, after affording a reasonable opportunity to both parties. Hence, the revision.

4. Learned counsel for the petitioner submitted that the trial Court misconstrued the scope of Section 26 of the Specific Relief Act and allowed the petition on assumptions and presumptions.

5. Learned counsel for the respondent submitted that the proposed amendment would not cause any prejudice to the petitioner. He further submitted that the trial Court rightly considered the scope of Section 26 of the Specific Relief Act and

allowed the petition; therefore, it is not a fit case to allow the revision.

6. The point that arises for consideration in this revision is:

Whether there is any illegality, irregularity or impropriety in the order of the trial Court?

7. To substantiate the arguments, learned counsel for the respondent has drawn the attention of this Court to **Puran Ram v. Bhaguram[1],** wherein the Hon'ble Apex Court held at paragraph Nos.12, 13 and 14, which reads as follows:

> "**12.** After closely examining the provisions made under Section 26 of the Specific Relief Act, 1963, we do not find any difficulty to hold that in a suit for specific performance of contract for sale, it is permissible to amend a part of the description of the suit property not only in the plaint but also in the agreement. Section 26 clearly says as to when a contract or other instrument can be rectified and provides that when through fraud or a mutual mistake of the parties, the agreement in writing does not express their real intention, it is open to the parties to apply for amendment of the instrument. It provides that when such a situation arises, then
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> > "26. (1)(*a*) either party or his representative in interest may institute a suit to have the instrument rectified, or
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> > (*b*) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified."
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> **13.** A reading of these two conditions made under Section 26 of the Act would amply show that either party may institute a suit to have the instrument rectified or a party who has already filed a suit in which any right arising under the instrument is in issue may claim in his pleading

[1] (2008) 4 SCC 102

that the instrument be rectified. So far as the facts of the present case are concerned, it cannot be doubted that the main issue in the suit for specific performance of the contract for sale was relating to the agreement for sale in which a part of the description of the suit property was wrongly given by mutual mistake and therefore, needed to be amended.

14. Section 26, of course, says that it would be open to a party to institute a suit for correcting the description of the suit property, but the proviso to Section 26 clearly permits that where a party has not claimed any such relief in his pleading, the court shall at any stage of the proceeding allow him to amend the plaint on such terms as may be just for including such claim. From a plain reading of the provisions under Section 26 of the Act, there is no reason why the prayer for amendment of the agreement to correct a part of the description of the suit property from Chak No.3 SSM to Chak No.3 SLM, later on converted to Chak No.3 SWM could not be granted. In our view, it is only a correction or rectification of a part of the description of the suit property, which cannot involve either the question of limitation or the change of nature of suit. In our view, the suit shall remain a suit for specific performance of the contract for sale and a separate independent suit is not needed to be filed when the proviso to Section 26 itself clearly permits either party to correct or rectify the description of the suit property not only in the plaint but also in the agreement itself. So far as the question of limitation is concerned, the agreement was entered into on 12.04.1991 and the suit, admittedly, was filed within the period of limitation. Therefore, even if the amendment of plaint or agreement is allowed, that will relate back to the filing of the suit which was filed within the period of limitation."

8. Learned counsel for the petitioner has drawn the attention of this Court to **Subhadra and others v. Thankam**[2], wherein the Hon'ble Apex Court held at paragraph Nos.7 and 8, which reads as follows:

> "**7.** The bare reading of this portion shows that something in addition to the bare land was intended to be sold. The description of the entire property has been given in Ext.B1. In other words, 5 cents and complete description of Ext. B1 was the subject matter of the sale in terms of Ext.A1. This aspect of the case stands fully clarified and Ext.A1 has been completely clarified with certainty by the report of the Commissioner, which was relied upon by the trial Court. In face of the matters being beyond ambiguity, there is no occasion for this Court to interfere with this finding of fact. Furthermore, the question of rectification in terms of Section 26 of the Act would, thus, not arise. The provisions of Section 26 of the Act would be attracted in limited cases. The provisions of this Section do not have a general application. These provisions can be attracted in the cases only where the ingredients stated in the Section are satisfied. The relief of rectification can be claimed where it is through fraud or a mutual mistake of the parties that real intention of the parties is not expressed in relation to an instrument. Even then the party claiming will have to make specific pleadings and claim an issue in that behalf.
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> **8.** The Learned Counsel appearing for the appellant placed reliance on the case of Puram Ram v. Bhaguram, [(2008) 4 SCC 102] and contended that since no relief for rectification has been prayed, the decree for specific performance ought not to be granted. This submission is based upon the misreading of the judgment of this Court. All that has been stated in the judgment is that Section 26 (4) of the Act only says that no relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed. However, proviso to Section 26 (4) of the Act makes it clear that when such a relief has not been claimed by the concerned

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[2] AIR 2010 SC 3031

parties, the Court shall, at any stage of the proceedings allow him to amend the pleadings on such terms, as may be just, for including such a claim and it would be necessary for the party to file a separate suit. The legislative intent in incorporating this provision, therefore, is unambiguous and clear. The purpose is not to generate multiplicity of litigation but to decide all issues in relation thereto in the same suit provided the provisions of Section 26 of the Act are attracted in the facts of a given case. We have already stated that the provisions of Section 26 of the Act are not attracted in the facts and circumstances of the present case. On the contrary, the respondent had specifically taken up the plea that Ext. A1 and B1 relate to sale of specific property and there was no ambiguity or mutual mistake. The Courts have returned a concurrent finding in favour of the respondent and we see no reason to disturb the said finding. The High Court has specifically noticed that perusal of Ext. B1 shows that the eastern boundary is the property owned by one Kuttappan Master and the northern boundary is shown as rest of the property as old one. There is no controversy in the appreciation of evidence and the Courts have recorded the concurrent finding on the basis of evidence documentary and oral, adduced before them and have taken a view which is permissible and in accordance with law. The contention of law raised before us on behalf of the appellant, in any case, has no merit as aforestated."

9. As per the principle enunciated in the cases cited supra, a party to the proceeding can file an application under Section 26 of the Specific Relief Act for amendment of the plaint as well as rectification of the agreement.

10. It is the case of the respondent that the petitioner executed an agreement of sale in his favour on 30.06.2003 agreeing to sell the suit schedule property. It is the case of the petitioner that he executed the agreement as a security and not with an intention to sell the suit schedule property.

11. It is needless to say that while disposing of interlocutory application, the Court shall not express any opinion with regard to nature of the agreement, which ultimately affects the rights of one of the parties to the proceedings. Therefore, this Court is not inclined to express any opinion with regard to nature of the agreement dated 30.06.2003, in view of pendency of the suit. In the agreement as well as in the plaint, the description of the suit schedule property is mentioned as MCH No.4-1-101. The petitioner as well as the respondent are parties to the agreement dated 30.06.2003. It is the contention of the respondent that due to mistake on the part of both parties, the premises number is mentioned as 4-1-101 instead of 4-1-1001 in the agreement as well as in the plaint. A perusal of Section 26 of the Specific Relief Act at a glance clearly demonstrates that the parties to the proceedings can file an application for amendment of the plaint.

12. In order to appreciate the rival contentions, it is not out of place to extract hereunder paragraph No.14 of the affidavit filed in I.A.No.1065 of 2017:

> "14) As stated above, in the schedule of the agreement of sale dated 30.06.2003 it was stated that "Methodist Atria" forms part of Municipal No.4-1-101. I think that the respondent did not give the said wrong number without any fraudulent intention as he paid me the rent every month, to the shop in the first floor of the building which he received from M/s. Pantaloon Retail (India) Ltd from November 2001 to December 2002. The respondent herein and myself signed on the agreement of sale dated 30.06.2003 under the impression that Methodist Atria forms part of Municipal No.4-1-101. It happened due to mutual mistake of both of us."

13. A perusal of the above para clearly reveals that due to mistake on the part of both parties, the premises number is mentioned as MCH No.4-1-101 instead of 4-1-1001. The affidavit filed by the respondent satisfied the ingredients of Section 26 of the Specific Relief Act. There is no dispute with regard to identity of the property. In such circumstances, allowing of the amendment petition would not cause any prejudice to the petitioner. The trial Court considered the scope of Section 26 of the Specific Relief Act in the light of the facts and circumstances of the case and allowed the petition. The trial Court has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing with the findings recorded by the trial Court. There is no illegality, irregularity or impropriety in the order of the trial Court warranting interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India.

14. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

15. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 08.08.2018
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