

THE HONORABLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.724 of 2011

ORDER

This petition under Article 227 of the Constitution of India is filed challenging the order dated 10.02.2011 passed in I.A.No.1090 of 2010 in O.S.No.476 of 2008 by the X Additional Chief Judge, Fast Track Court, City Civil Court, Hyderabad, dismissing the application filed under Order VI Rule 17 of CPC to permit the petitioner/plaintiff to amend the plaint in paragraphs Nos.5 (A) to 5(J) running into five pages.

2. The petitioner/plaintiff filed the suit for recovery of amount based on agreement between it and the respondents/defendants. The only reason assigned in the petition seeking leave to amend the plaint is that the particulars mentioned in the pleadings are cryptic and that since the foundation for the plaint is the agreement entered by the plaintiff with the defendants and various acts committed by the defendants, entire particulars detailing with the various aspects involved in the lis are necessary for proper adjudication of the claims involved in the suit. Therefore, it is submitted that due to change of management and keeping in view the urgency in the matter, with all available material, the above suit has been filed and that while searching for the relevant material to adduce the evidence, certain facts pertaining to the above suit have been found and the said facts are most important and necessary to be mentioned in the suit. Non-mentioning of the facts, which are disclosed in the proposed

amendment, are neither intentional nor wanton and that the proposed amendment would not change the nature of the claim and if the leave is not granted, it may lead to miscarriage of justice and therefore, it sought for permission to amend the plaint.

3. The respondents did not file counter.

4. Upon hearing the counsel for the petitioner and the respondents, the trial Court passed the impugned order dismissing the petition holding that the cause shown by the petitioner is not justifiable to grant leave to amend the plaint.

5. Aggrieved by the said order, the present revision petition is filed raising several contentions, mainly on the ground that when the application is not opposed by the respondents, the trial Court ought to have allowed the application, but for unknown reason, it dismissed the petition and that the trial Court lost sight of the language used under Order VI Rule 17 of CPC, which permits the parties to amend the pleadings at any stage of the proceedings and as such, the trial Court failed to exercise its discretion and committed error in dismissing the petition and prayed to set aside the order impugned.

6. During hearing, learned counsel for petitioner, while reiterating the contentions urged in the petition, placed reliance on the judgments of the Apex Court in **Sajjan Kumar v. Ram Kishan**¹ and

¹ (2005) 13 SCC 89

M.C.Agrawal Huf v. Sahara India and others². On the strength of the principles of law declared in the said two judgments, he requested this Court to grant leave to amend by adding paragraph Nos.5(A) to 5(J) in the plaint.

7. None appeared for the respondents.

8. It is evident from paragraph No.6 of the affidavit filed along with the petition that the suit was filed with the available material in view of the urgency, but the pleadings are cryptic as admitted by the petitioner. When the petitioner was preparing for adducing evidence, it found some important facts which are required to be pleaded in the plaint and therefore, sought permission to amend the plaint.

9. It is an admitted fact that the issues were framed and after two years, the present petition is filed seeking amendment of the plaint by exercising power under Order VI Rule 17 of CPC. Undisputedly, the law is clear that the Court must have adopt liberal approach while allowing pre-trial amendments, but for allowing post-trial amendments, the Court has to find out whether the reason mentioned is sufficient or not and whether such amendment amount to filling of lacunas etc. Besides that, the petitioner has to establish that despite exercise of due diligence, it could not bring those facts before commencement of trial. Here in this case, issues in the suit were framed and posted for trial of the suit and during preparation for adducing evidence, the petitioner allegedly found certain facts.

² (2008) 5 SCC 642

But the reason assigned by the petitioner is purely an artificial one and is not sufficient to permit it to amend the pleadings. Though the petitioner filed suit with available material and cryptic pleadings, such laconic pleadings cannot be allowed to be permitted to be amended at subsequent stage.

10. It is the contention of the counsel for petitioner that the basis for claim is agreement between the petitioner and the respondents for payment of Rs.150 per case. But the said fact was not pleaded in the plaint though the agreement gives rise to cause of action for filing the suit. When the suit is bereft of sufficient pleadings to give rise to a cause of action, the Court cannot fill up lacunas in the plaint on the lame excuse that the suit was filed with available material and on account of finding material while preparing for adducing evidence, amendment is necessary.

11. The power under Order VI Rule 17 of CPC can be exercised at any stage of proceedings, subject to the proviso to Order VI Rule 17 of CPC to grant leave to amend the pleadings, 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.

12. It is pertinent to note that the petitioner, by invoking Order VI Rule 17 of CPC, wanted to substitute most of the pleadings setting up an agreement between it and the respondents as they are not pleaded initially and that agreement alone gives rise to cause of action for filing the suit. The Apex Court in **Revajeetu Builders and Developers v. Narayanaswamy & Sons and others**³, 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 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.

³ 2009(8) SCJ 401

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 factum of exercising due diligence depends upon circumstances."

In **Rajkumar Guruwara (dead) through LRs v. S.K. Sarwagi and Company Private Limited and another**⁴, 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.

In view of the law declared by the Apex Court, the judgments relied upon by the counsel for petitioner have no application and in fact, the law declared in those judgments is not in dispute.

⁴ (2008) 14 Supreme Court Cases 364

13. In **Revajeetu Builders's** case, referred supra, the first guideline is 'whether the amendment sought is imperative for proper and effective adjudication of the case'. In the present facts of the case, though the petitioner stated that the agreement is the basis for the suit claim, it was not pleaded in the plaint and on account of failure of petitioner to plead such agreement, a valuable right is accrued to the respondents and if such amendment is allowed, it would take away the right that accrued to the respondents and on that ground, the amendment is liable to be rejected. The second guideline is 'Whether the application for amendment is bona fide or mala fide. In the present case, according to the admission made by the petitioner that the suit was filed with available material in view of the urgency and cryptic pleadings. This itself would suffice to conclude that the petitioner was negligent in filing the plaint before the Court in view of the alleged urgency which is not explained in the petition. When the petitioner conveniently filed the suit for one reason or the other with available material though he is aware about the agreement between it and the respondents, which is the basis for the claim, it is difficult to accept the bona fides of the petitioner in filing the petition. The third guideline is 'whether the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money, which is not required to be discussed in this matter since the proceedings are at the stage of pre-trial stage. Though it is stated that at the time of preparation for adducing evidence, the petitioner found certain facts, the cause shown by it in the affidavit is insufficient to allow the petition and the

trial Court has rightly dismissed the petition on the ground that there was petitioner's negligence in filing the suit initially and such defect cannot be remedied by exercising power under Order VI Rule 17 of CPC which is purely discretionary in nature.

14 Hence, I find no ground to set aside the impugned order. Consequently, the Civil Revision Petition is liable to be dismissed as it is devoid of merit.

15 In the result, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

M. SATYANARAYANA MURTHY, J

22nd February, 2018

sj

