

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CIVIL REVISION PETITION No.4121 OF 2011**

**ORDER:**

This civil revision petition is filed, under Article 227 of the Constitution of India, challenging the order dated 25.07.2011 in I.A. No.1595 of 2010 in O.S. No167 of 2004 passed by the Principal District and Sessions Judge, Ranga Reddy District at L.B. Nagar, Hyderabad, whereby the learned District Judge dismissed the petition filed under Rule 10(2) of Order I read with Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC').

The petitioner is the plaintiff in the suit. He filed a petition under Rule 10(2) of Order I CPC to implead the respondents 2 to 5 as defendants 2 to 5 in the suit on the ground that the said suit was filed against the first defendant treating it as a propriety concern, later on, when the suit was posted for argument, it came to the notice of the petitioner that the first defendant is a partnership firm, not a propriety concern and the partnership consisting of four partners, who is proposed respondents 2 to 5, and sought to implead those proposed parties/ respondents 2 to 5 as defendants 2 to 5 in the main suit.

Respondents 2 to 5 filed counter denying the material allegations *inter alia* contending that the first defendant clearly asserted in the written statement filed in the suit that it is not propriety concern, is a partnership firm in the year 2005 itself, but the petitioner did not take steps to amend the plaint suitably and implead the parties, who is concerned with the transaction, and prayed for dismissal of the petition.

It is the case of the petitioner that when the suit is filed against the first defendant as propriety concern, but not the case of filing suit against the wrong defendant. In fact, the first defendant is only propriety concern, according to the allegations made in the plaint. When the suit is coming for argument, it was found that the first defendant is not propriety concern, but it is a partnership firm and sought to implead the respondents 2 to 5 as defendants 2 to 5 in the main suit. It is the clear case of the petitioner that he filed suit against the wrong defendant, since partnership firm and propriety concern are distinguishable in its formation and they are having different entities in law. The petition was filed after long lapse of six years from the date of filing suit.

According to Section 21 of the Limitation Act, where after the institution of a suit, a new plaintiff or, defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party. Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

Where a party is impleaded by invoking Rule 10(2) of Order I CPC as proper and necessary party, limitation starts from the date of their impleading, but in the present case on hand, it is the case of the petitioner that the respondents 2 to 5 are proper and necessary parties, but the first defendant was shown in the suit as propriety concern instead of treating it as partnership firm. Even if

the respondents 2 to 5 are impleaded, the date of effect of their impleadment is from the date of filing petition i.e. almost after lapse of six years and that apart the suit claim is of the year 2000 and the limitation is only 3 years for recovery of amount and hence by the date of filing the petition, the claim against the proposed respondents 2 to 5 is hopelessly barred by limitation.

In such case, impleadment of respondents 2 to 5 as defendants 1 to 5 would not serve any purpose. Therefore, the trial court rightly dismissed the petition as the suit was filed against the wrong defendant not against the person with whom privity of contract. Hence, I find no ground to interfere with the order passed by the trial court exercising power under Article 227 of the Constitution of India, consequently the revision is liable to be dismissed.

In the result, the civil revision petition is dismissed on the ground that the claim against the respondents 2 to 5 is barred, in view of Section 21 of the Limitation Act. No costs.

Consequently, miscellaneous Petitions, if any, pending shall stand closed.

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**M.SATYANARAYANA MURTHY, J**

Date:14.03.2018  
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