

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.4122 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.1596 of 2010 in O.S. No.167 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 17 of Order VI read with 151 of the Code of Civil Procedure, 1908 (for short 'CPC') and rule 28(2) of Civil Rules of Practice.

The petitioner filed a petition under Rule 17 of Order VI of CPC to amend the plaint as stated in the proposed amendment.

Admittedly, the suit was filed in the year 2004 and trial was completed and it was posted for argument. At this stage, the petitioner came know that there is mistake in the plaint and sought for amendment of the plaint invoking Rule 17 of Order VI of CPC.

The respondents disputed the claim of the petitioner while contending that the amendment cannot be permitted, after completion of trial and when the suit was posted for argument, in view of bar under the proviso to Rule 17 of Order VI of CPC.

The trial court, upon hearing argument of both the counsel, dismissed the petition holding that the petitioner cannot be permitted to amend the plaint.

It is an undisputed fact that the trial of the suit was completed and the suit was posted for argument. Rule 17 of Order VI CPC permits parties to alter or amend his pleadings at any stage

in such manner and on such terms as may be just, and all such amendments shall be 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 inspite of due diligence, the party could not have raised the matter before the commencement of trial.

In view of the Proviso to Rule 17 of Order VI CPC, when the trial is completed, amendment cannot be allowed unless the petitioner satisfy the Court that despite due diligence he could not have raised such plea before the Court.

In the present case the petitioner did not plead that inspite of exercising due diligence, he could not have raised such plea in the entire affidavit. When a petition is filed sought to leave of the court to amend the plaint, invoking Rule 17 of Order VI of CPC, it is the duty of the petitioner to satisfy the court that he exercised due diligence and inspite of it he could not raise such plea.

The word 'due diligence' is not defined anywhere, but in **Bharat Petroleum Corporation Ltd. v. Precious Finance Investment Pvt. Ltd**¹ it was defined that,

"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

¹ 2006 (6) BomCR 510

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**² 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:

"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 definition of the word 'due diligence' referred supra in the judgment of Bombay High Court and Apex Court, the petitioner has to prove that he has acted as an ordinary reasonable prudent man and it is a question of fact. It is for the petitioner that he has taken every care and caution in prosecuting the proceedings.

In the present facts of the case, the first respondent filed written statement on 04.04.2005 specifically asserting that it was partnership concern, not propriety concerned. It was also pleaded in the written statement that even the said partnership firm is also

² (2008) 5 Supreme Court Cases 117

not in existence, however details of the partners are not disclosed. The trial court, after referring the law laid down by the Apex Court in various judgments, has concluded that leave to amend the plaint cannot be granted at the stage when the suit is posted for argument, since the petitioner failed to satisfy the court that inspite of due diligence, he could not raise such plea.

In **Rameshkumar Aggarwal v. Rajamala Exports Private Limited and others**³, the Apex Court relying on **Revajeetu Builders and Developers v. Narayanaswamy & Sons and others**⁴, to decide the scope of proviso to Rule 17 of Order VI of CPC laid down certain guidelines for granting or denying relief under Rule 17 of Order VI of CPC viz., as follows:

“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 malafide;

3) The amendment should not cause such prejudice to the otherside 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.

In view of the law laid down by the Apex Court, the contention of the petitioner is required to be examined.

The main contention of the petitioner is that when the suit was posted for argument of both the counsel, he came to know that the first defendant is a partnership concerned, but not

³ AIR 2012 SC 1887

⁴ 2009(8) SCJ 401

propriety concerned. The first defendant raised specific plea in the written statement that it is a partnership firm, but it is not in existence and the suit claim pertains to the year 2000 and the suit was filed in the year 2004, but the application was filed in the year 2010 that after lapse of six years.

According to the guidelines No.6 of the guideline laid down by the Apex Court in **Revajeethu Builders** case, 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.

In the present facts of the case, the proposed amendment is hopelessly barred by limitation. In the circumstances the Court shall not grant leave to the petitioner.

Learned counsel for the petitioner placed reliance on the judgment in **Pankaja and another Vs Yellappa (dead) by LRS and others**⁵ wherein the Division Bench of the Apex Court held that there is no absolute rule that in such a case, the amendment should not be allowed and the discretion of the court in that regard depends on the facts and circumstances of the case and such discretion has to be exercised on a judicious evaluation thereof. It was further held in that decision that an amendment, which subserves the ultimate cause of justice and avoids further litigation, should be allowed.

In the above judgment, the Apex Court did not advert to the Proviso to Rule 17 of Order VI of CPC introduced by Act 22 of 2002. However, in the latter judgment in **Chakreshwari**

⁵ 2004(6) SCC 415

Construction Private Limited v. Manohar Lal⁶ the Apex Court held that 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 bonafide or malafide;*
- 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.*

An identical issue came up before the Apex Court in **Raj Kumar Bhatia v. Subhash Chander Bhatia**⁷, wherein it was held that in the exercise of its jurisdiction under Article 227, the High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess the evidence upon which the inferior court or tribunal has passed an order relying on the judgment in **Sadhna Lodh v National Insurance Company**⁸

The Full Bench judgment of the Apex Court in **Raj Kumar Bhatia** case is a binding principle and by applying the principle, it is difficult to reassess the material on record to grant leave to the petitioner.

Hence I find no ground to interfere with the order passed by the court below exercising power under Article 227 of the Constitution of India in view of Full Bench judgment of this Court

⁶ (2017) 5 SCC 212

⁷ (2018) 2 SCC 87

⁸ 2003 ACJ 505

and the civil revision petition is deserves to be dismissed as devoid of merits.

In the result, the civil revision petition is dismissed. No costs.

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

M.SATYANARAYANA MURTHY, J

Date:14.03.2018
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