

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1159 OF 2017

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed questioning the order dated 13.02.2017 in I.A.No.647 of 2016 in O.S.No.327 of 2015 passed by the IV Additional Senior Civil Judge, City Civil Court, Hyderabad by the respondent/petitioner, whereby the petition filed under Order VI Rule 17 C.P.C., was allowed subject to payment of costs of Rs.3,000/-.

2. The respondent filed petition seeking leave of the Court to correct house No.8-2-675/B/1 as it was wrongly typed as H.No.8-2-675/1//B/1 in para No.3(i) of the plaint schedule appended to the plaint alleging that the respondent herein filed suit for ejectment, recovery of arrears of rent, mesne profits and other incidental charges. At the stage of trial, it is noticed that there is a mistake of door number at two places in the plaint including para 3(i) and schedule annexed to the plaint. If the error is not rectified, the petitioner will be put to serious loss.

3. The petitioner herein filed counter denying material allegations *inter alia* contending that he obtained premises bearing No.8-2-675/1/B/1, but not premises bearing No.8-2-675/B/1 and that in different paras, it was referred as door No.8-2-675/B/1. Though written statement was filed on 05.11.2015, the petitioner did not take any steps to rectify the mistake and PW.1 was also examined and thus, the trial is commenced. When the trial is commenced, the petitioner is not entitled to claim relief to amend the pleadings in view of the bar under Order VI Rule 17 C.P.C. and requested to dismiss the petition.

4. The Court below, upon hearing arguments of both counsel allowed the petition permitting the respondent herein to carry out the amendment

at two places as claimed in the petition. Aggrieved by the impugned order, the present revision petition is filed mainly on the ground that when the trial is commenced, the Court below ought not to have allowed the petition without explaining the reason for failure to bring those facts on record and that non exercise of due diligence, the petition cannot be allowed. Therefore, the Court below committed error, which is contrary to Order VI Rule 17 C.P.C. and prayed to set aside the impugned order.

5. During hearing, learned counsel for the petitioner herein contended that the suit is filed for ejectment by issuing notice as required under the Transfer of Property Act and door number is wrongly mentioned, the respondent cannot rectify the mistake after commencement of trial. Therefore, the impugned order is erroneous on the face of record and requested to set aside the impugned order.

6. *Per contra*, learned counsel for the respondent contended that the mistake is purely an inadvertence and the premises number was mentioned at different places correctly and only at two places, the mistake was occurred and such mistake can be rectified by seeking leave of the Court to amend the plaint appropriately and placed reliance on the judgments of the Apex Court in **B.K.N. Pillai v P.Pillai and another**¹ and **Sogra Begum v Ghousia Begum**².

7. Considering the rival contentions, perusing the material available on record, the point that arises is:

Whether the impugned order of granting leave to amend the plaint is sustainable in view of bar under proviso to Order VI Rule 17 C.P.C.?

¹ AIR 2000 SC 614

² 2017(5) ALD 122

POINT:

8. It is an undisputed fact that the suit was filed for ejectment of petitioner/defendant from the schedule premises after following necessary procedure contemplated under the Transfer of Property Act. There is a clear mistake in door number at two places i.e. at para 3(i) and in schedule annexed to the plaint. However, mistake was crept due to inadvertence. Therefore, the petitioner filed petition to permit him to rectify the mistake that occurred due to inadvertence of the respondent. No doubt, the suit is filed for ejectment of the petitioner and for other reliefs and it is not the case of the respondent that the petitioner is in occupation of any other premises. On the other hand, the petitioner himself admitted in para one of the written statement that he obtained premises bearing No.8-2-675/1/B/1, but not premises described in the schedule annexed to the plaint.

9. The main ground urged before this Court is that the trial is already commenced and after commencement of trial, in view of interdict contained in the proviso to Order VI Rule 17 C.P.C., the respondent/plaintiff cannot seek leave of the Court to amend the plaint. No doubt there is a clear interdict in proviso to Order VI Rule 17 C.P.C. to permit the respondent to amend the plaint unless he explain that despite exercise of due diligence he could not brought on record certain facts before commencement of trial and unfortunately the petition is totally silent as to exercise of due diligence. The Apex Court in **J.Samuel and others v Gattu Mahesh and others**³ had an occasion to deal with the same situation while deciding scope of proviso to Order VI Rule 17 C.P.C. and held that:

“In the given facts, there is a clear lack of ‘due diligence’ and the mistake

³ (2012) 2 SCC 300

committed certainly does not come within the preview of a typographical error. The term 'typographical error' is defined as a mistake made in the printed/typed material during a printing/typing process. The term includes errors due to mechanical failure or slips of the hand or finger, but usually excludes errors of ignorance. Therefore, the act of neglecting to perform an action which one has an obligation to do cannot be called as a typographical error. As a consequence the plea of typographical error cannot be entertained in this regard since the situation is of lack of due diligence wherein such amendment is impliedly barred under the Code.

The claim of typographical error/mistake is baseless and cannot be accepted. In fact, had the person who prepared the plaint, signed and verified the plaint showed some attention, this omission could have been noticed and rectified there itself. In such circumstances, it cannot be construed that due diligence was adhered to and in any event, omission of mandatory requirement running in to 3 to 4 sentences cannot be a typographical error as claimed by the plaintiff's. All these aspects have been rightly considered and concluded by the trial Court and the High Court has committed an error in accepting the explanation that it was a typographical error to mention and it was an accidental slip."

10. The facts of the above case are identical to the present facts of the case and the figure one is missing in the door number at two places between figures '675' and 'B', which totally changes the premises number itself, but the explanation offered by the respondent is inadvertence. Even if the same principle is applied to the facts of the present case certainly the respondent failed to exercise due diligence. As such the mistake or omission ought to have noticed or rectified, if the counsel or party showed their attention at the time of filing the suit before the Court. This itself indicates that the respondent failed to exercise due diligence. Therefore, on the basis of this principle it is difficult to accept the contention of the respondent.

11. Learned counsel for the respondent placed reliance on various judgments with regard to amendment of pleadings by exercising power invoking proviso to Order VI Rule 17 C.P.C. The Apex Court in **Surender**

Kumar Sharma v Makhan Singh⁴ held that the amendment of the plaint cannot be allowed, which change the nature or character of the suit. The Courts have wide power under Order VI Rule 17 C.P.C., which confer unfettered discretion to allow such amendment of the pleadings to the party in such a manner and on such terms as it appears to the Court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, mere delay and latches in making the application for amendment cannot be a ground to refuse amendment. But in the above Judgment, the Apex Court, did not discuss proviso to Order VI Rule 17 C.P.C., introduced by amendment Act 22 of 2002. Therefore, in the absence of any discretion with regard to proviso, this Court cannot allow such amendment in view of clear interdict contained in proviso to Order VI Rule 17 C.P.C.

12. In another judgment in **Sogra Begum's case referred supra**, this Court had an occasion to dealt with the petition under Order VI Rule 17 C.P.C. and after considering various judgments of the Apex Court in **Kailash v Nankhu**⁵ , **Ramesh Kumar Agarwal v Rajmala Exports Private Limited**⁶ and **Revajeetu Builders and Developers v Naranaswamy and sons**⁷.

13. Order VI Rule 17 C.P.C. deals with amendments, including consequential amendments. But Rule 28 of Civil Rules of Practice mandates that an application for amendment made under Order I Rule 103, Order VI Rule 17, Order XXII C.P.C. shall also contain a prayer for all consequential amendments. This rule is incorporated only to avoid

⁴ (2009) 10 SCC 626

⁵ (2005) 4 SCC 480

⁶ (2012) 4 AL 1 SC

⁷ (2009) 8 SCJ 401

multiple applications after amending Civil Rules of Practise. Prior to amendment, the practise was to file two applications one for impleadment and the other for consequential amendment. After amendment of rules, such procedure is taken away and in view of the rule, the contention of the petitioner that the bar under proviso to Order VI Rule 17 C.P.C is not applicable is without substance.

14. On the other hand, the principles laid down in the above judgment are against the contention of this petitioner. Moreover, in **Baldev Singh v Manohar Singh**⁸ was considered in **Kailash's** case referred supra, wherein the Apex Court held as follows:

“At this point the question arises: When does the trial of an election petition commence or what is the meaning to be assigned to the word ‘trial’ in the context of an election petition? In a civil suit, the trial begins when issues are framed and the case is set down for recording of evidence. All the proceedings before that stage are treated as proceedings preliminary to trial or for making the case ready for trial. As held by this Court in several decided cases, this general rule is not applicable to the trial of election petitions as in the case of election petitions, all the proceedings commencing with the presentation of the election petition and up to the date of decision therein are included within the meaning of the word ‘trial’.”

15. This aspect is not in dispute as the trial is already commenced as alleged in the petition. The Apex Court in **Tilak Raj v Baikunthi Devi (D) by LRs**⁹ dealt with the powers of the Court under Section 152 C.P.C. to amend decree and judgment after pronouncement of judgment, which is of no assistance to the respondent to claim relief in the petition. But in **Revajeetu Builders and Developers's** case referred supra the Apex Court laid down certain guidelines, which are as follows:

““On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into

⁸ Laws (SC) 2006-8-5

⁹ (2009) 0 AIR (SC) 2136

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.

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."

16. According to the principles laid down in the above judgment, for allowing amendment, it is not just costs, but the delays caused thereby, benefit of such delays, the additional costs which had to be incurred by the victim of the amendment. The Court must scientifically evaluate the reasons, purpose and effect of the amendment and all these factors must be taken in to consideration while awarding the costs. But according to the guidelines, when the pre-trial amendment can be allowed as a matter of routine and for allowing post trial amendments, the Court has to consider the effect of such amendment. Learned counsel for respondent drawn the attention of this Court to the same judgment to para 34 wherein the leading English case of **Cropper v Smith** (6(1884) 29 Ch D 700) it was held as follows:

"It is a well established principle that the object of the Courts is to decide the rights of the parties and not punish them for mistakes they make in the conduct in their cases by deciding otherwise than in accordance with their rights.. I know of no kind of error or mistake which, if not fraudulent or intended to over reach, the Court ought not to correct if it can be done without injustice to the other party. Courts do not exist for the sake of discipline but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or grace.. it seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected if it can be done without injustice, as anything else in the case is a matter of right."

17. But this principle is based on the law prevailing in England and in view of bar in proviso to Order VI Rule 17 C.P.C., the Court cannot likely to accept the contention of grant leave to amend the plaint as a matter of routine. No prejudice or injustice to the other party is also one of the considerations. But that itself is not sufficient, if such interpretation is given to Order VI Rule 17 C.P.C.

18. Learned counsel for the respondent also drawn the attention of another judgment of the Apex Court in **Smt Lachi Tewari and others v Director of Land Records and others**¹⁰ pertaining to amendment of C.P.C. by Act 22 of 2002 introducing proviso to Order VI Rule 17. But the principle laid down in the judgment cannot be applied to the present facts of the case in view of interdict to proviso to Order VI Rule 17 C.P.C. by virtue of amendment Act 22 of 2016. Learned counsel also brought to the notice of the Court the judgment of the Karnataka High Court in **Sharanappa and others v The Managing Director, NEKRTC, Kalaburagi**¹¹, wherein amendment was pleaded in a petition filed under Motor Vehicles Act, the Court allowed the amendment liberally as it would not cause any injustice to any other party. In one of the judgments of this Court in **Mareddy Seetharathnam v Siruvuri Venkatarama Raju and another**¹² considered the principle laid down in **J.Samuel's** case referred supra, but allowed the petition under Order VI Rule 17 C.P.C. on the ground of substantial justice etc. The present facts of the case are almost identical to the facts in **J.Samuel's** case referred supra, wherein a suit was filed for ejectment and in the guise of inadvertence they wanted to rectify the mistake and the Court held that it was not typographical error or mistake and dismissed the petition. If the above principle is applied to the present facts of the case, the respondent is disentitled to claim relief under Order VI Rule 17 C.P.C as the trial was already commenced, even according to the admission of the respondent in the petition. But the Court below without looking into the law laid down by the Apex Court and without discussing anything about the law laid down by various Courts, allowed the petition and committed serious error.

¹⁰ 1984 Supp 1 SCC 431

¹¹ 2018 0 ILR (Kar) 219

¹² 2016 (0) Supreme (AP) 484

19. Yet another lacuna in the affidavit is that it is bereft of any ground to satisfy the Court that despite exercise of due diligence, the respondent could not bring the facts on record before commencement of trial. In the absence of such explanation to the satisfaction of the Court, the Court cannot allow such application in a routine manner when the legislative intention is to prevent delays in rendering speedy justice to the parties and proviso to Order VI Rule 17 C.P.C. Therefore, I find that the impugned order is erroneous in view of law declared by the Apex Court in **J.Samuel's** case referred supra and consequently, the revision petition is liable to be allowed.

20. In the result, the civil revision petition is allowed setting aside the order dated 13.02.2017 in I.A.No.647 of 2016 in O.S.No.327 of 2015 passed by the IV Additional Senior Civil Judge, City Civil Court, Hyderabad and consequently, I.A.No.647 of 2016 in O.S.No.327 of 2015 is dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending shall stand closed.

M. SATYANARAYANA MURTHY, J

16.11.2018
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