

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.2359, 2362 and 2398 of 2011

COMMON ORDER:

The civil revision petition No.2359 of 2011 is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.1038 of 2010 in O.S.No.214 of 2008 dated 24.03.2011 passed by the Principal Junior Civil Judge, Madanapalle, whereby, the petition filed under Order VI Rules 1 and 17 and Section 151 of Code of Civil Procedure (for short "C.P.C.") was dismissed.

The civil revision petition No.2362 of 2011 is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.1036 of 2010 in O.S.No.284 of 2008 dated 24.03.2011 passed by the Principal Junior Civil Judge, Madanapalle, whereby, the petition filed under Order VI Rules 1 and 17 and Section 151 of Code of Civil Procedure (for short "C.P.C.") was dismissed.

The civil revision petition No.2398 of 2011 is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.1037 of 2010 in O.S.No.282 of 2008 dated 24.03.2011 passed by the Principal Junior Civil Judge, Madanapalle, whereby, the petition filed under Order VI Rules 1 and 17 and Section 151 of Code of Civil Procedure (for short "C.P.C.") was dismissed.

The allegations in all the revisions and the grounds or reasons in the impugned orders passed by the trial Court are almost identical, hence it is expedient to decide all the three revisions by common order.

For convenience sake, I would like to refer the facts as narrated in C.R.P.No.2359 of 2011.

C.R.P.No.2359 of 2011:

The petitioner/plaintiff filed a petition under Order VI Rules 1 and 17 of C.P.C. seeking leave of the Court to amend the name of the defendant in the short and long cause title by adding “@ Harivardhanamma” after Aruna.

It is alleged that the suit is filed for recovery of amount on the foot of promissory note allegedly executed by the defendant and the defendant is contesting the suit by filing a written statement contending that she never executed any promissory note. But the defect in the name sought to be amended was noticed only after completion of trial when the suit was posted for arguments. Therefore, the petitioner sought leave of the Court to amend the plaint by exercising power under Order VI Rule 17 of C.P.C.

The respondent/defendant filed counter denying the material allegations inter alia contending that she signed on Vakalat as Harivardhanamma and not as Aruna and at no point of time, she was called as Aruna as alleged by the petitioner/plaintiff, therefore, the suit is not maintainable and consequently, the petition cannot

be allowed to amend the plaint suitably to include the name “@Harivardhanamma” after Aruna in the short and long cause title after completion of trial and prayed for dismissal of the petition.

The trial Court upon hearing both counsel dismissed the petition on that ground that the petition was filed at belated stage as it was filed at the stage of arguments.

Aggrieved by the said order, the unsuccessful petitioner before the trial Court preferred this revision under Article 227 of Constitution of India contending that the respondent is known as Aruna but not as Harivardhanamma, but the promissory note was executed by Aruna @ Harivardhanamma. Therefore, the circumstances necessitated the petitioner to file a petition seeking leave of the Court to amend the plaint, but the trial Court did not consider this aspect and committed an error in passing the impugned order and prayed to set aside the impugned and grant leave to amend the name of the defendant in the short and long cause title to add “@Harivardhanamma” after Aruna.

Learned counsel for the respondent supported the order passed by the trial Court.

Undisputedly, the suit was filed for recovery of amount on the foot of promissory note allegedly executed by Aruna in favour of the petitioner/plaintiff, but the respondent/defendant signed on Vakalat as Harivardhanamma. In the written statement and during trial, the respondent clearly asserted that her name is only “Harivardhanamma” and not “Aruna”, despite the same, the

petitioner/plaintiff did not take any steps to file a petition under Order VI Rule 17 of C.P.C., but after completion of trial, when the suit is posted for arguments, the present petition is filed.

When a petition seeking leave to amend the plaint is filed after completion of trial, if the petitioner is able to prove or explain as to how he 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 the present facts of the case, the respondent filed Vakalat long prior to filing of the present petition and also filed written statement disputing the suit promissory note, but no steps were taken to file a petition seeking leave to amend the plaint, thus, failed to exercise due diligence as required under Order VI Rule 17 of C.P.C.

In ***“Rameshkumar Aggarwal v. Rajamala Exports Private Limited and others¹”***, the Apex Court relying on ***“Revajeetu Builders and Developers v. Narayanaswamy & Sons and others²”***, to decide the scope of proviso to Order VI Rule 17 C.P.C 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 AIR 2012 SC 1887

² 2009(8) SCJ 401

- 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."

Similarly in “**G.S. Prakash v. Polasa Hanumanlu**”³, learned single Judge of this Court laid down certain guidelines where an amendment has to be allowed and also instances where amendment has to be refused and it reads as follows:

17. I do not intend to burden this Judgment with myriad precedents on the subject. On a careful analysis of the judicial precedents referred to above, it needs to be held that as a general rule, the Courts have to adopt a liberal approach in considering the applications for amendment of pleadings, subject to certain exceptions. Without intending to be exhaustive, but only illustrative, broadly stated, instances on either side are stated hereunder:

"Instances where amendments have to be allowed :

- (a) All pre-trial stage (prior to examination of witnesses) amendments which do not alter the nature and character of the suit and substitute or introduce new cause of action;
- (b) In cases of pending or post-trial amendments, the Court must allow the same subject to the applicant, in addition to satisfy the condition (a) supra, satisfying two other conditions, viz., (i) that the amendment is necessary for determining the real questions in controversy and (ii) that despite due diligence, the applicant could not move the application at an earlier stage;
- (c) Where, the proposed amendment will not work injustice or cause prejudice to the other side;
- (d) Where, by the proposed amendment the position of the other party will be altered, but the same can be compensated by costs;
- (e) Even where the proposed amendment introduces inconsistency in pleadings, if by the proposed amendment, the party does not seek to resile from the admissions if any made in the original pleadings;
- (f) Where the proposed amendment relates to a time barred claim and the Court is satisfied that allowing such amendment really subserves the cause of justice and avoids further litigation.

Instances where amendments have to be refused:

- (i) Where by the proposed amendment the party seeks to alter the nature, character and constitution of the suit (mere inconsistent pleadings may not, in all cases, change the nature

³ 2015 (2) ALT 594

and character of the suit) or substitute cause of action or introduce a distinct cause of action;

(ii) where the valuable defence by way of admissions by a party has accrued to the opposite party and by the proposed amendment the party intends to resile from such admissions;

(iii) where the position of the other party will be altered by the proposed amendment and the injury caused to him by such alteration could not be compensated in costs.

(iv) Where the proposed amendment lacks bonafides and is far too belated and the party seeking the amendment was not diligent in approaching the court;

(v) Where a fresh suit, if instituted on the proposed amendments, will be barred by law;"

Applying the guidelines laid down in the said judgment and for failure to satisfy the Court that in spite of exercise of due diligence he could not take steps to amend the plaint appropriately and even according to the plaint, the borrower is only Aruna not Aruna @ Harivardhanamma, leave cannot be granted to amend plaint, and this Court cannot reverse the order exercising power under Article 227 of Constitution of India in view of Full Bench Judgment of Apex Court rendered in "**Raj Kumar Bhatia v. Subhash Chandra Bhatia**"⁴

Therefore, the order passed by the Court below does not suffer from any illegality or irregularity warranting interference of this Court while exercising power under Article 227 of Constitution of India. Hence, the order is free from legal infirmity and the revision lacks merit. Consequently, the revision is liable to be dismissed.

⁴ (2018) 2 SCC 87

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

C.R.P.Nos.2362 and 2398 of 2011:

In view of the detailed order passed in C.R.P.No.2359 of 2011, these two civil revision petitions are also dismissed. No costs.

The miscellaneous petitions pending in all the three revisions, if any, shall also stand closed.

21.02.2018
Ksp

JUSTICE M. SATYANARAYANA MURTHY

