

**THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**

**CIVIL REVISION PETITION No.3785 of 2018**

**ORDER:**

This civil revision petition is filed by the petitioners-defendant Nos.1 to 4, under Article 227 of the Constitution of India, challenging the order dated 15.02.2018 passed in I.A.No.357 of 2017 in O.S.No.179 of 2016 (Old O.S.No.33 of 2009) on the file of the Telangana State Waqf Tribunal, at Nampally, Hyderabad.

2. Heard the learned counsel for the petitioners.

3. A perusal of the record reveals that the first respondent filed O.S.No.179 of 2016 (Old O.S.No.33 of 2009) on the file of the A.P. State Wakf Tribunal, at Hyderabad against the petitioners for ejectment from the suit schedule property and consequential perpetual injunction. The second respondent was shown as proforma party i.e., defendant No.5. The petitioners filed I.A.No.357 of 2017 under Order VI Rule 17 of CPC seeking amendment of the written statement. The first respondent filed counter opposing the claim of the petitioners. The Wakf Tribunal dismissed the petition after affording a reasonable opportunity to both parties. Aggrieved by the same, the petitioners filed the revision petition.

4. Learned counsel for the petitioners submitted that the Tribunal has not considered the scope of Order VI Rule 17 of CPC and dismissed the petition on assumptions and presumptions. He further submitted that the proposed amendment will not change or alter the nature of the suit.

5. Now, the point that arises for consideration is:

Whether there is any illegality, irregularity or impropriety in the impugned order passed by the Tribunal?

6. To substantiate the argument, learned counsel for the petitioners has drawn the attention of this Court to the decision in **G.S.Prakash v. Polasa Hanumanlu**<sup>1</sup> wherein it was held as follows:

“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.”

7. He also placed reliance on the decision in **South Konkan Distilleries v. Prabhakar Gajanan Naik**<sup>2</sup>, wherein it was held that *“where the limitation was a disputed question of fact, prayer for amendment could not be rejected”*.

8. Let me consider the facts of the case on hand in the light of the above legal principles.

9. The first respondent filed the suit for ejectment of the petitioners and consequential perpetual injunction. The petitioners filed the written statement in the year 2009. Basing on the plea taken by the petitioners, the Tribunal framed appropriate issues. After completion of the plaintiff's side evidence, the matter was posted for defendants' side evidence. At that stage, the petitioners

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<sup>1</sup> 2015 (1) ALD 270

<sup>2</sup> 2008 (14) SCC 632

filed the present application under Order VI Rule 17 of CPC on the following two grounds:

1. Their previous counsel has not properly mentioned the family pedigree of the defendants in the written statement; and
2. To include the subsequent events.

10. The record reveals that the petitioners were very much aware of their family pedigree much prior to filing of the written statement in the month of October 2009. Even assuming but not conceding that their previous counsel has not mentioned the family pedigree of the petitioners, what prevented them to be brought it to the notice of their counsel before subscribing their signatures on the written statement? It is not the case of the petitioners that they are rustic villagers, at least, to justify their stand. Non-mentioning of the family pedigree of the petitioners in the written statement was very much aware by the petitioners since 2009. The petitioners have not raised even their little finger in order to set right the things before commencement of the trial. The petitioners have taken a plea that their previous counsel has not properly mentioned their family pedigree. The possibility of taking this type of grounds in order to gain sympathy of the Court; thereby to overcome the latches on the part of the petitioners and also the legal consequences cannot be ruled out. As per the principle enunciated in **Amrutha v. G.Ravinder Reddy**,<sup>3</sup>, any latches on the part of the previous counsel is not a ground for amendment of the written statement.

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<sup>3</sup> 2006 (6) ALD 757

11. Having regard to the facts and circumstances of the case and also the principle enunciated in **Amrutha** (3<sup>rd</sup> cited supra) the first contention of the petitioners has no legs to stand.

12. The next contention of the learned counsel for petitioners is that as the proposed amendment will not change the nature of the suit, the petition is liable to be allowed. It is a settled principle of law that a party to the proceedings, who files an application for amendment of pleadings, after commencement of trial, has to satisfy the ingredients of the proviso to Order VI Rule 17 of CPC. It is not in dispute the suit is coming up for defendant side evidence. It is the case of the petitioners that they have been working as muthawallis from 2014 onwards after the death of their father. This fact was also not brought to the notice of the Tribunal for the last four years.

13. In order to resolve the issue, this Court is placing reliance on the following decisions:

(1) **Chander Kanta Bansal v Rajinder Singh Anand**<sup>4</sup> wherein the Hon'ble apex court held at Paragraph Nos.15 and 16 as follows:

15. As discussed above, though first part of Rule 17 makes it clear that amendment of pleadings is permitted at any stage of the proceeding, the proviso imposes certain restrictions. It makes it clear that after the commencement of trial, no application for amendment shall be allowed. However, if it is established that in spite of "due diligence" the party could not have raised the matter before the commencement of trial depending on the circumstances, the court is free to order such application.

16. The words "due diligence" have not been defined in the Code. According to *Oxford Dictionary* (Edn. 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* (18th Edn.), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given

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<sup>4</sup> (2008) 5 SCC 117

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 Edn. 13-A) "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.

(2) **J.Samuel v Gattu Mahesh**<sup>5</sup> wherein the Hon'ble apex court

held at Paragraph Nos.16 and 19 as follows:

16. As stated earlier, in the present case, the amendment application itself was filed only on 24-9-2010 after the arguments were completed and the matter was posted for judgment on 4-10-2010. On proper interpretation of the proviso to Rule 17 of Order 6, the party has to satisfy the court that it could not have discovered that ground which was pleaded by amendment, in spite of due diligence. No doubt, Rule 17 confers power on the court to amend the pleadings at any stage of the proceedings. However, the proviso restricts that power once the trial has commenced. Unless the court satisfies (*sic* itself) that there is a reasonable cause for allowing the amendment, normally the court has to reject such a request.

19. Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term "due diligence" is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial.

(3) **Sarabjit Kaur v Joginder Singh Bamra**<sup>6</sup> wherein Punjab &

Haryana High Court held at Paragraph Nos.7 and 9 as follows:

7. Above provisions makes it ample clear that Order 6 Rule 17 commences with the words "the court may at any stage of the proceedings" and thereafter, goes on to confer a power to allow either party to alter or amend his pleadings, where it appears to the court that the amendment is necessary for the purpose of determining the real questions in controversy. The proviso, by use of the expression "Provided that no application for amendment shall be allowed after the trial has commenced" appears to place an embargo on the power of a court to allow amendment of pleadings after the trial has commenced. If the proviso were to end with this expression, it could justifiably be argued that pleadings cannot be amended after the commencement of a trial. The proviso, however, qualifies the prohibitory

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<sup>5</sup> (2012) 2 SCC 300

<sup>6</sup> 2016 (181) PunLR 719

expression by the use of the words "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" thereby clarifying that the embargo is not absolute and the court, may if circumstances so permit, allow an amendment after the commencement of the trial.

9. Above provisions revealed that even after the commencement of a trial, the power of the Court to amend the pleadings, subsists, but the Court must consider the facts that the amendment is necessary for the purpose of determining the real controversy and if the applicant satisfies the Court that despite the exercise of due diligence, he could not raise the pleadings before the trial commenced, allow such a prayer, even after the commencement of the trial.

14. The affidavit filed by the petitioners, in support of the petition, is consisting of three paragraphs. This Court has carefully scanned all the three paragraphs, line by line and word by word, in order to ascertain that despite due diligence the petitioners could not file the amendment petition before commencement of the trial. There is no mention in the affidavit that in spite of their due diligence they could not file amendment petition for the reasons beyond their control. The affidavit filed by the petitioners is conspicuously silent with regard to the due diligence on the part of the petitioners. The affidavit filed by the petitioners is bereft of the basic ingredients of the proviso to Order VI Rule 17 of CPC. Establishment of the ingredients of the proviso to Order VI Rule 17 of CPC is *sine qua non* to allow the petition under Order VI Rule 17 of CPC after commencement of trial. The Tribunal considered the facts of the case on hand in the light of the provisions of Order VI Rule 17 of CPC. The Tribunal has assigned reasons much less cogent and valid reasons to its findings. I am fully agreeing with the findings recorded by the Tribunal.

15. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases 4<sup>th</sup> to 6<sup>th</sup> cited supra,

this Court is of the considered view that there is no illegality, irregularity and impropriety in the impugned order warranting interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India.

16. Hence, the Civil Revision Petition is dismissed at the stage of admission. No order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

**T.SUNIL CHOWDARY, J**

**10<sup>th</sup> July 2018**

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