

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2395 OF 2015

ORDER:

This revision petition is filed under Article 227 of the Constitution of India, challenging the order dated 27.04.2015 in I.A.No.3863 of 2014 in O.O.P.No.720 of 2006 passed by the Principal District Judge, Kadapa, dismissing the application filed under Order VI Rule 17 C.P.C, to amend the petition to add the following reliefs:

1. *Delete the word 'Principal' in the 1st relief portion and in its place add the word 'President' in para No.19 of the petition.*
2. *To add the following reliefs as reliefs 3 and 4 in para No.19 of the petition.*
3. *To add the following reliefs as reliefs 3 and 4 in Para No.9 of the petition.*
 - a) *to declare that the alleged General Body Meeting dated 05.11.2006 and subsequent meetings conducted by both the respondents as null and void and not binding on the petitioner's society.*
 - b) *To disqualify the respondents 1 and 2 as office bearers and also from the primary membership of the petitioner's society.*

2. The petitioner mainly contended that by mistake he referred 'Principal' in the place of 'President' and it is an accidental. Apart from that the petitioner questioned the general body meeting dated 05.11.2006 alleged to have been conducted by the respondents is not legal and they have no power or authority to conduct the same and sought relief of declaration to declare that the respondents have no right to continue as President and Secretary and also as executive

committee members till disposal of O.P. The General Body Meeting dated 05.11.2006 is not binding on the petitioner and that the respondents despite temporary injunction orders passed in I.A.No.3031 of 2006 did so many acts by violating the orders passed by the Court. Due to pendency of C.R.P.No.251 of 2007 before this Court, where the interim order was obtained, the petitioner could not bring the illegal acts done by the respondents to the notice of the Court. In view of the wrongful acts of respondents it became necessary for the petitioner to seek the above relief by filing petition under Order VI Rule 17 C.P.C. and prayed to grant leave to the petitioner to amend the plaint as claimed.

3. The 1st respondent filed counter denying the material allegations, *inter alia* contending that the petition is not maintainable and that the petition is sheer abuse of process of law and it amounts to an act of contempt due to violation of order dated 01.07.2010 passed by this Court in C.R.P.No.251 of 2007.

4. The petitioner filed I.A.No.3031 of 2006 against the respondents and obtained interim injunction order on 04.01.2006. Aggrieved by the same, respondents 1 and 2 have filed C.R.P.No.251 of 2007 before this Court and at the time of admission of the revision petition, an interim order was passed and that it is also contended that O.P. became

infructuous and raised several other contentions for dismissal of the petition.

5. The Principal District Judge, upon hearing both counsel held that the petitioner is not entitled to seek relief of the Court to amend the petition assigning the reasons for such negation. Aggrieved by the impugned order passed by the Court below, the present revision is filed on various grounds mainly contending that the proposed amendment would not cause any prejudice to the respondents and that the amendment can be admitted at any stage of the proceedings, but the Court below did not consider the same in proper perspective and committed error.

6. During hearing, learned counsel for the petitioner while reiterating the grounds urged in the petition, placed reliance in **Revajeetu Builders and Developers v. Narayanaswamy and Sons and others**¹ and **Chakreshwari Construction Private Limited v Manohar Lal**². On the strength of the principles in the above judgments, learned counsel for the petitioner contended that the order passed by the Court below is erroneous on the face of it and prayed to set aside the order, allow petition filed by the petitioner under Order VI Rule 17 C.P.C. granting leave to amend the petition as prayed for.

¹ (2009) 10 SCC 84

² (2017) 5 SCC 212

7. Whereas, learned counsel for the respondents placed on record the copy of the original petition, where the relief claimed is limited and when the trial is commenced, the same cannot permit the petitioner to amend the pleadings, unless, they satisfy the Court that they exercised due diligence in bringing those facts by filing a petition under Order VI Rule 17 C.P.C. to amend the petition and on this sole ground, the petition is liable to be dismissed.

8. The respondents are President and Secretary elected in the General Body Meeting and the tenure was only for academic year and now the tenure was over by the date of filing the petition before the Court in the year 2014, since the period of office was expired in the year 2007 itself. But for different reasons, the proceedings are being continued and the petitioner wanted to convert the petition filed challenging the election of the President and Secretary and their continuation as members of the Executive Committee during disposal of O.P. and for grant of injunction in consequence of declaration.

9. The first relief is only an interim relief. But the second relief claimed in the petition is for grant of perpetual injunction and in fact, as on today, the President and the Secretary referred in para 19(1) of the main petition are no more Secretary and President of the Society, as per the

contention, since their tenure of office was over after a year from the date of election by the General Body as President and Secretary.

10. Even assuming for a moment that they are continuing as President and Secretary, the Court cannot allow such amendment unless he satisfies the Court that despite exercise of due diligence, the petitioner could not bring those facts to the Court in view of Order VI Rule 17 C.P.C. But the Court below already observed in para 8 that on 23.04.2014 chief examination affidavit of PW.1 was filed and on 05.06.2014 Exs.A.1 to A.26 were marked and on 26.06.2014, PW.1 was cross examined in part. On 26.06.2014, PW.1 was further cross examined. On 15.07.2014, PW.2 filed affidavit in lieu of examination in chief and cross examined on 17.07.2014. Similarly on 19.08.2014 PW.3 filed affidavit in lieu of examination in chief and cross examined on 09.09.2014 and thereafter, reported no further evidence on 22.09.2014. On 11.11.2014, affidavit filed in lieu of examination of RW.1. and marked Exs.B.2 to B.25 on 14.11.2014. RW.1 cross examined on 20.11.2014 and completed cross examination on 04.02.2015. On 12.02.2015, RW2 was cross examined and similarly, the other witnesses were also examined on different dates and the petition was posted for arguments on 24.03.2015. The petition was filed in the year 2014 i.e. after commencement of trial before the Court below. Therefore, the

petitioner unless satisfies the Court that he exercised due diligence as required to proviso under Order VI Rule 17 C.P.C., not entitled to claim any relief under Order VI Rule 17 C.P.C.

11. Learned counsel for the petitioner while contending that when no prejudice would be caused to the respondents, if a petition for amendment is allowed, placed reliance on **Chakreshwari Construction Private Limited'** case referred supra, wherein the Apex Court reiterated the guidelines formulated in **Revajeetu Builders and Developers's** case referred supra. In any view of the matter, prejudice to the other side alone is not a ground to order petition filed under Order VI Rule 17 C.P.C.

12. According to Order VI Rule 17 C.P.C., the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

13. In view of the amendment by Act 22 of 2002 adding a proviso to Order VI Rule 17 C.P.C, it become necessary to prove that the petitioner despite exercise of due diligence, he could not amend the pleading by filing appropriate application.

14. The Apex Court in **Revajeetu Builders and Developers's** case referred supra, laid down seven guidelines, which are extracted hereunder:

“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) 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.

(7) 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.

15. The same is reiterated in **Rajesh Kumar Agarwal and others v K.K.Modi and others**³, wherein the apex Court observed that the object of Order 6 Rule 17 is that the Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. The rule of amendment is essentially a rule of justice, equity and good conscience and

³ 2006(3) ALT 50 SC

the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court. The Court always gives leave to amend the pleadings of a party unless it is satisfied that the party applying was acting mala fide. The amendment to pleading should be liberally allowed since procedural obstacles ought not to impede the dispensation of justice. The Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. The Court further held that while considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment.

16. In view of the law declared by the Apex Court in **Rajkumar Guruwara (dead) through LRs v. S.K. Sarwagi and Company Private Limited and another⁴** and **Baldev Singh v. Manohar Singh⁵** and earlier judgment in **Revajeetu Builders and Developers's** case referred supra, the petitioner has to satisfy the Court that despite exercise of due diligence, he could not bring certain facts to the notice of the Court by

⁴ (2008) 14 Supreme Court Cases 364

⁵ LAWS (SC)-2006-8-5

way of amendment. What is due diligence is a question to be decided. But the Apex Court in the above two judgments explained about the word 'due diligence'.

17. In view of the law declared by the Apex Court 'due diligence' means taking care in prosecuting the proceedings. But here, the affidavit is totally silent as to proviso under Order VI Rule 17 C.P.C. and there was no explanation for his failure to file such application before commencement of trial.

18. In exercise of jurisdiction under Article 227 of the Constitution of India, the High Court does not act as an appellate Court or Tribunal and therefore, cannot review or re-assess the evidence upon which inferior Court or Tribunal passed the order assailed before it. Thus, where the trial Court in the considered exercise of its jurisdiction under Order VI Rule 17 C.P.C. allowed/dismissed amendment of written statement, interference with the order by the High Court under Article 227 of the Constitution of India, entering upon merits of the case sought to be set up by appellant/defendant in amendment is impermissible and justified vide **Raj Kumar Bhatia v Subhash Chandra Bhatia**⁶.

19. As observed in the earlier paras, the trial was commenced by the date of filing the petition and did not

⁶ 2018(2) SCC 87 (FB)

satisfy the Court that despite exercise of due diligence, he could not amend the pleadings before commencement of trial. Therefore, in view of bar under proviso to Order VI Rule 17 C.P.C. by applying principle laid down in **Baldev Singh's** case referred supra, I find no ground to allow the petition setting aside the order passed by the Court below since the impugned order is free from illegality while exercising power under Article 227 of the Constitution of India.

20. Accordingly, the civil revision petition is dismissed. There shall be no order as to costs.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.



JUSTICE M. SATYANARAYANA MURTHY

Date: 15.02.2018
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