

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**CIVIL REVISION PETITION No.4497 of 2017****ORDER:**

This Civil Revision Petition under Article 227 of the Constitution of India is filed questioning the Order dt. 02.08.2017 in I.A.No.54 of 2014 in O.S.No.584 of 2009 passed by I Additional Senior Civil Judge at Rajamahendravaram, allowing the petition filed under Order 6 Rule 17 CPC permitting the respondent herein to amend the plaint as prayed for and carry out the consequential amendments and file neat copy of the plaint by next adjournment.

Respondent No.1 herein filed petition under Order 6 rule 17 CPC before the trial Court seeking leave to amend the plaint at para No.9 (a) and clause 5 (a) in para No.13 of the plaint to claim relief against this petitioner.

It is alleged in the affidavit filed along with this petition by the respondent No.2/plaintiff that they filed O.S.No.584 of 2009 against Defendant Nos. 1 to 4 for declaration that he being the Managing partner of respondent No.1 firm is entitled to manage the affairs including assets, mainly plaint 'A and B schedule properties' and various reliefs including permanent injunction restraining the defendants from entering into any contracts or transactions whatsoever in respect of the plaint schedule property. It is further alleged that during pendency of the suit, defendant Nos. 1 to 4, without any authority or capacity brought into existence collusive registered sale deed dt. 28.02.2011 in favour of Defendant No.11 for an extent of 6,602 sq.yards of site out of plaint 'B' schedule property and that the purchaser, the petitioner herein, was impleaded as defendant No.11 as per the Orders in I.A.No.928 of 2011 and thereby, the plaint is to be amended for consequential impleadment of the present petitioner as defendant No.11, but by oversight, he could not amend the

prayer to claim relief against the defendants including the petitioner (defendant No.11). Therefore, sought permission to amend the plaint adding para No.9 (a) and clause 5 (a) in para No.13 of the plaint.

The petitioner herein (Defendant No.11) filed Counter, which is adopted by other defendants by filing a Memo, besides contending that he purchased property from defendant Nos. 1 to 4, who is the Major shareholders, under Registered Sale Deed Dt. 28.02.2011 specifically contending that the relief sought to be claimed in para No.9 (a) is time barred and when the respondent did not amend the plaint appropriately in a petition filed under Order 1 Rule 10 CPC, he cannot be permitted to amend the plaint. He also contended that the relief claimed by proposed amendment, would change the nature of the suit and such amendments cannot be permitted and sought to dismiss the petition.

Upon hearing both the counsel, the trial Court passed the impugned order granting permission to amend the plaint as claimed.

Aggrieved by the impugned Order, the present Revision is filed on various grounds, but mainly contended that the trial Court did not record any specific reason except inconsistent conclusions arrived in para Nos. 2 and 3 of the Order and passing such an Order without considering the basic principles to amend the pleadings under Order 6 Rule 17 CPC is erroneous and requested to set aside the Order passed by the trial Court.

During hearing, V. Venkataramana, learned Senior Counsel appearing for the Petitioner, contended that if the proposed amendment is allowed, the structure of the suit itself will be changed and such amendments cannot be permitted by exercising power under Order 6 Rule 17 CPC and apart from that at this belated stage, the proposed amendments cannot be allowed, more particularly, when the petitioner filed under Order 1 Rule 10 CPC, he can seek consequential amendments

in view of Rules 28 of Civil Rules of Practice, but without claiming such consequential amendments earlier, filed the present petition and such amendments cannot be allowed and requested to set aside the Order by dismissing the Petition.

During hearing, Sri D.V.Seetharamamurthy, learned Senior Counsel appearing for the respondents supported the Order impugned in all respects.

The reason for seeking leave of the Court to amend the plaint by exercising power under Order 6 Rule 17 CPC is that after impleading the petitioner as defendant No.11, the respondent could not seek appropriate relief against the petitioner, but it was realised after some time to proceed with the trial. Therefore, the respondent/plaintiff sought leave of the Court to amend the plaint as stated above. The trial Court, upon hearing both the counsel, after narrating the relief claimed by respondent/plaintiff in the first para, and in one sentence, the general denial made in the Counter is extracted without adverting to any of the allegations made in the Counter and the petitions. The trial Court also observed that as per the material on record, issues are not framed and the trial is not yet commenced and that an application in I.A.No.928 of 2011 was filed earlier for amendment of the plaint and the same was allowed, but the present amendment was not the part of the earlier amendment petition and since the trial is not yet commenced in the suit, the proposed amendment was allowed for determining the real question in controversy. As seen from the Order passed by the trial Court, it indicates that the trial Court can grant leave to amend the pleading at any stage before commencement of the trial by imposing costs. But, the trial Court totally ignored the basic principles for granting leave to amend the pleadings under Order 6 Rule 17 CPC and the law laid down by the various Courts including the Apex Court in *Chander Kanta Bansal v*

*Rajinder Singh Anand*¹, *Sumesh Singh v Phoolan Devi and others*², *Delhi Development Authority v S.S Aggarwal and others*, *Union of India v S.S. Aggarwal and others*, *S.S. Aggarwal and others v Union of India and another*³, *State Bank of Hyderabad v Town Municipal Council*⁴, *Ravajeetu Builders and Developers v Narayanaswamy and sons and others*⁵ and *J. Samuel and others v. Gattu Mahesh and others*⁶.

In *Ravajeetu Builders's* case (5 supra), the Apex Court framed certain guidelines to exercise power under Order 6 Rule 17 CPC to grant leave to amend the plaint and in brief, they are as follows:

- 1) Whether the amendment sought is imperative for proper and effective adjudication;
- 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 changes the nature and character of the case;
- 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 *Ravajeetu Builders's* case referred supra, the Apex Court laid certain parameters to be followed while imposing costs in para No.61 and 62. However, the costs cannot be and should not be imposed arbitrarily and the parameters which must be taken into consideration while imposing costs and they are as follows:

- 1) At what stage the amendment was sought.

¹ AIR 2008 SC 2234,

² AIR 2009 SC 2831,

³ AIR 2011 SC 3265

⁴ (2007) 1 SCC 765

⁵ (2009) 10 SCC 84

⁶ (2012) 2 SCC 300

- 2) While imposing the costs, it should be taken into consideration whether the amendment has been sought at the pre-trial or post trial stage.
- 3) The financial benefit derived by one party at the cost of other party should be properly calculated in terms of money and the costs.
- 4) The imposition of costs should not be symbolic and realistic.
- 5) The delay and inconvenience caused to the opposite side must be clearly evaluated in terms of the additional and extra court hearings compelling the opposite party to bear the extra costs.
- 6) In case of appeal to higher courts, the victim of the amendment is compelled to bear considerable additional costs.

As seen from the Order impugned in this revision, the trial Court did not take into consideration the basic principles to exercise power under Order 6 Rule 17 CPC to grant leave to the parties to amend their pleadings and costs to be imposed, but allowed the petition on payment of costs and such Order cannot be sustained and therefore, the order passed by the trial Court is hereby set aside while remanding the petition to the trial Court to decide the petition afresh keeping in view the law declared by the Apex Court in the judgments referred above within a period of two months.

Accordingly, this Civil Revision Petition is allowed setting aside the Order dt. 02.08.2017 in I.A.No.54 of 2014 in O.S.No.584 of 2009 on the file of I Additional Senior Civil Judge at Rajamahendravaram, while remanding the matter to the trial Court to decide the petition afresh in accordance with law after affording an opportunity to both the parties within a period of two months from the date of receipt of a copy of this Order. .

M. SATYANARAYANA MURTHY, J

Date: 06-11-2018
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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