**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CIVIL REVISION PETITION No.3907 of 2011**

**ORDER**:

The civil revision petition is filed under Article 227 of the Constitution of India, challenging the order dated 21.07.2011 passed in I.A.No.843 of 2011 in O.S.No.259 of 2006 by the Senior Civil Judge, Bhimavaram, whereby, the petition filed under Order VI Rule 17 of Code of Civil Procedure (for short "C.P.C.") was dismissed.

The petition under Order VI Rule 17 of C.P.C. is filed contending that originally schedule property belonging to the father of petitioner No.1/plaintiff No.1 namely Mallikarjuna Rao and he died intestate on 24.03.2003 leaving behind him respondent Nos.1 and 2, mother of petitioner Nos.2 and 3 and petitioner No.1, as his heirs and that the wife of Mallikarjuna Rao by name of Satyavathi was predeceased to her husband and that mother of petitioner Nos.2 and 3 by name Mangayamma died about 4 years ago and that the suit is filed for partition. During pendency of the suit, petitioners came to know that Mallikarjuna Rao executed a Will on 10.01.2003 in favour of plaintiffs and defendants and that the said Will is in the custody of one of its attestor by name Satyanarayana and that he also produced the same before the Court and the same was marked as Ex.X.1, thereby it necessitated amendment to contend that the father of the petitioners executed a Will bequeathing the property in favour

of plaintiffs and defendants, which is in the custody of Satyanarayana.

The respondents/defendants filed counter opposing the petition on various grounds and the specific contentions raised in the counter are that the suit was filed initially based on intestate succession, now the petitioners intend to convert the intestate succession into testamentary dispossession and the same cannot be permitted and prayed for dismissal of the petition.

The trial Court upon hearing argument of both the counsel dismissed the petition on that ground that the evidence should be in support of pleadings but not vice versa.

Aggrieved by the said order, the unsuccessful petitioners before the trial Court preferred this revision under Article 227 of Constitution of India.

During hearing learner counsel for the petitioners reiterated the grounds urged in the revision petition, whereas learned counsel for the respondents supported the order passed by the trial Court.

The suit was filed in the year 2006 subsequent to introduction of proviso to Order VI Rule 17 of C.P.C. by Act 22 of 2002 and in the suit itself it is stated that the father of the petitioner No.1/plaintiff died intestate leaving behind him, the petitioners/plaintiffs and respondents/defendants as his heirs to succeed the estate of the deceased. Now, they wanted to introduce a Will to contend that he executed a Will bequeathing the property in favour of the plaintiffs and defendants. Thus, directly they are converting the intestate succession into testamentary

dispossession and the rules governing these two are different under Hindu Law. Moreover, it is clear from the affidavit that during examination of B.Satyanarayana, attestor of the Will, Ex.X.1, it came to the notice of the petitioners that their father executed a Will and died. Examination of said Satyanarayana and marking of Ex.X.1 itself indicates that the amendment is sought after commencement of trial, but in view of bar under Proviso to Order VI Rule 17 of C.P.C. the petition cannot be allowed unless the petitioners satisfied the Court in spite of exercise due diligence, they could not raise such plea, but the affidavit is totally silent on this aspect.

In "***Rameshkumar Aggarwal v. Rajamala Exports Private Limited and others***[1]**",** the Apex Court relying on "***Revajeetu Builders and Developers v. Narayanaswamy & Sons and others***[2]**",** 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.
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> 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;
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> 4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

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[1] AIR 2012 SC 1887
[2] 2009(8) SCJ 401

(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 :

[3] 2015 (2) ALT 594

(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 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 (i) to (iv) laid down in the said judgment and for failure of petitioners to satisfy the Court that in spite of exercise of due diligence they could not raise such plea, 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.

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

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

**JUSTICE M. SATYANARAYANA MURTHY**

26.02.2018
Ksp

[4] (2018) 2 SCC 87