

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

I.A.NOS.1 OF 2017, and I.A.Nos.1 and 2 OF 2018
IN/ AND
CIVIL REVISION PETITON NO. 4750 OF 2015

ORDER:-

I.A.No.1 of 2017 is filed to bring on record the petitioners 5 and 6 as legal representatives of the deceased-4th petitioner. The learned counsel for the respondents has no objection for the same. Hence, this application is ordered.

2. I.A.No.2 of 2018 is filed to expedite the hearing of the revision petition. As the revision petition itself is being decided today, this application is dismissed.

3. I.A.No.1 of 2018 is filed for stay of all further proceedings including the trial in O.S.No.30 of 2015 on the file of the court of III Additional District Judge, Tirupati. When the matter is taken up for hearing, both learned counsel argue on the merits of the matter. As such, this application is being taken up along with main revision today itself.

4. The revision is filed aggrieved by the order dated. 07-08-2015 passed in I.A.No.456 of 2015 in O.S.No.30 of 2015 on the file of the court of III Additional District Judge, Tirupati. I.A.No.456 of 2015 is filed under Order VI Rule 17 CPC read with Rule 28 of Civil Rules of Practice and Section 151 CPC seeking an amendment to the plaint. The respondents have strongly opposed the application and argued that on the basis of the earlier suit O.S.No.104 of

2003 the proposed amendment is not tenable in law and that this also hopelessly barred by limitation.

5. This court has heard Sri K.Jayakumar, learned counsel for the revision petitioners and Sri Ravindra Rao, learned Senior Counsel appearing for the respondents.

6. The learned counsel for the petitioners argues that as it is pretrial amendment, it should be considered liberally. He relied upon the judgment of the Supreme Court in *N.C.Bansal vs. Uttar Pradesh Financial Corporation and Another*⁽¹⁾ and drew the attention of this court to para.16 of the judgment wherein the Hon'ble Apex Court held that as the suit is at initial stage; and the proposed amendment sought in the plaint does not change the nature of the suit, the amendment should be allowed.

7. In response thereto, the learned Senior Counsel appearing for the respondents, in all fairness, conceded that in view of the law on the subject, a pretrial amendment should be liberally considered. But, however, the learned senior counsel pointed out that there is a serious issue to be decided on the aspect of limitation even if the application for amendment is allowed. He relied upon the judgment of Apex Court in *Pankaja and another vs. Yellappa(dead) By Lrs and Others*⁽²⁾ wherein the Hon'ble Apex Court held that there is no strait jacket formula and no absolute rule in allowing the amendment petition. In the case before the

¹ 2018 Law Suit (SC) 37

² (2004) 6 SCC 415

Supreme Court also there was a serious issue about the law of limitation. However, the Hon'ble Supreme Court allowed the application and gave a direction to the trial court to frame a necessary issue in that regard and decide the same in accordance with law. The learned senior counsel pointed out that this law still holds good and that the Hon'ble Supreme Court followed its earlier decision in *L.J.Leach and Co.Ltd. vs. Jardine Skinner and Co.*⁽³⁾ in coming to this conclusion.

Following the dicta laid down by the Supreme Court, this court is also inclined to allow the revision petition. Accordingly, the Civil Revision Petition is allowed and the order dated.07-08-2015 passed in I.A.No.456 of 2015 in O.S.No.30 of 2015 on the file of the court of III Additional District Judge, Tirupati is set aside and I.A.No.456 of 2015 is allowed. However, in view of the serious contest that is there on the issue of limitation, the lower court is directed to frame a specific issue on the aspect of limitation basing on the pleadings and dispose of the suit in accordance with law. No costs.

D.V.S.S.SOMAYAJULU,J

27-08-2018
TSNR

³ AIR 1957 SC 357