

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.246 OF 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India challenging the order dated 19.10.2016 in I.A. No.321 of 2015 in O.S. No.16 of 2014 on the file of the Court of Senior Civil Judge, Kamareddy.

2. The parties are referred to as they were arrayed in the I.A., to avoid confusion.

3. The respondent herein filed O.S. No.16 of 2014 against the petitioner herein, on the file of the Court of Senior Civil Judge, Kamareddy, for recovery of an amount of Rs.5,00,000/- basing on promissory note dated 14.12.2012 executed by the petitioner herein. After completion of respondent-plaintiff's side evidence, the petitioner-defendant filed I.A.No.321 of 2015 under Order VI Rule 17 of CPC for amendment of the written statement. The respondent herein filed counter opposing the petition. After affording reasonable opportunity to both parties, the trial Court dismissed the petition on merits. Hence, the revision.

4. The learned counsel for the petitioner-defendant submitted that the trial Court failed to consider that on 04.12.2012 the petitioner was in Hyderabad. He further submitted that the trial Court misconstrued the proviso to Order VI Rule 17 of CPC and dismissed the petition on erroneous grounds. *Per contra* learned counsel for the respondent-plaintiff submitted that there is no pleading in the written statement that the petitioner was in Hyderabad on 04.12.2012. He further submitted that the

petitioner failed to satisfy the ingredients of Order VI Rule 17 of CPC and the trial Court considered the same in right perspective and dismissed the petition.

5. Now the point that arises for consideration is:

Whether there is any illegality, irregularity or impropriety in the order under revision?

6. A perusal of the record reveals that the respondent filed O.S.No.16 of 2014 on the file of the Senior Civil Judge, Kamareddy against the petitioner for recovery of the suit amount basing on promissory note dated 04.12.2012. The petitioner filed the written statement on 21.8.2014. After completion of respondent-plaintiff's side evidence, the matter was coming up for petitioner-defendant's side evidence. There is no pleading in the written statement that the petitioner took treatment in Sathya Kidney Centre and Super speciality Hospitals, Himayathnagar, Hyderabad on 04.12.2012. Whether the petitioner had taken treatment in Sathya Kidney Centre or not is within the exclusive knowledge of the petitioner, as on the date of filing written statement on 21.8.2014. If really the petitioner has taken treatment in Sathya Kidney Centre on 04.12.2012, what prevented him to take such a plea in the written statement? The very purpose of filing of written statement is to specify the defence taken by the defendant in order to demolish the case of the plaintiff. This Court carefully perused the cross-examination of the plaintiff (respondent herein) i.e., P.W.1. The defendant (petitioner herein) did not choose to put a suggestion to P.W.1 that the petitioner-defendant has taken treatment in Sathya Kidney Centre on 04.12.2012. For the reasons best known, the petitioner did not take such a plea in the written statement.

Taking of such a plea in order to protract the matter as long as possible cannot be ruled out completely. It is needless to say that a party to the proceedings, who files an application for amendment of pleadings, has to satisfy the ingredients of the proviso to Order VI Rule 17 of CPC.

7. In order to appreciate the rival contentions, this Court is placing reliance on the following decisions:

(i) **Chander Kanta Bansal v Rajinder Singh Anand**¹ 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 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.

(ii) **J.Samuel v Gattu Mahesh**² 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

¹ (2008) 5 SCC 117

² (2012) 2 SCC 300

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.

As per the principle enunciated in the cases cited *supra*, the Court has to consider whether the petitioner has satisfied the basic ingredients of the proviso to Order VI Rule 17 of CPC.

8. This Court carefully perused the affidavit filed by the petitioner. The averments made in the affidavit are bereft of the basic ingredients of proviso to Order VI Rule 17 of CPC. It is needless to say that after the commencement of trial, the Court shall not allow the petition to amend the pleadings, without proving due diligence on the part of the petitioner for non-mentioning of such fact in the earlier pleadings. The factum of taking or non-taking of treatment by the petitioner in Satya Kidney Centre & Super Specialty Hospital, Himayathnagar, Hyderabad is within the exclusive knowledge of the petitioner himself as on the date of filing of the written statement. The Court shall not lose sight of non-mentioning of such material fact by the petitioner in the written statement without any reasons much less cogent and convincing reasons. The trial Court considered the facts of the case on hand in the light of the Proviso to Order VI Rule 17 of CPC. The petitioner has not satisfied the ingredients of Proviso to Order

VI Rule 17 of CPC. The trial Court has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing the findings recorded by the trial Court. There is no illegality, irregularity or impropriety in the order under challenge to warrant interference by this Court.

9. In the result, the civil revision petition is dismissed. Miscellaneous petitions if any pending in this revision petition shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 12.6.2018

YS

