

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO. 1205 OF 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.569 of 2016 in O.S No.734 of 2015 dated 13.02.2017 passed by the II Additional Senior Civil Judge (FTC), Guntur, whereby the petition filed under Order VI Rule 17 C.P.C was dismissed.

The petitioner is the defendant in O.S.No.734 of 2015 seeking leave of the Court to amend the written statement, on the ground that the petitioner filed I.A.No.303 of 2016 under Section 45 of Evidence Act to refer the disputed signatures on promissory notes along with admitted signatures for expert opinion and the said petition was dismissed by the Trial Court and it was confirmed by this Court in C.R.P.No.4884 of 2016, observing that, no plea of forgery was raised in the written statement. In consequence of observations made by this Court in C.R.P.No.4884 of 2016, I.A.No.569 of 2016 is filed before the Trial Court seeking leave to amend the written statement and prayer sought by the petitioner in I.A.No.569 of 2016 is as follows:

“Add the following as para No.I(1) in the Written Statement immediately after para I.

This defendant further submits that the suit promissory note is rank forgery, brought into existence by the plaintiff by forging the signature of this defendant to gain wrongfully at the expense of the defendant and to harass him.”

I.A.No.569 of 2016 was opposed before the Court below by filing requisite counter and it was dismissed by the Trial Court.

One of the grounds raised in the counter is that, the petitioner wanted to withdraw the earlier admission by amending the written statement and that, at the stage when the trial is commenced, the petition is not maintainable and requested to dismiss the petition.

During hearing, learned counsel for the petitioner reiterated the contentions while raising a specific contention that the petitioner never borrowed any amount from the respondent herein/plaintiff and he handed over blank signed promissory notes and cheques to one Y. Nagabhushan Rao from whom no amount was borrowed under the said promissory note. But the debt due to him was discharged under different promissory notes. Therefore, no amount was borrowed, but suit was filed by said Y. Nagabhushan Rao through the respondent filling the columns of the blank signed promissory notes handed over to him along with the blank signed cheques. In case, the petitioner is not permitted to amend the written statement, he would be put to serious inconvenience and requested to set-aside the order passed by the Trial Court, while allowing this petitioner to amend the written statement.

Learned counsel for the respondent Dr. Challa Srinivasa Reddy supported the order passed by the Court below in all respects.

O.S.No.734 of 2015 is filed for recovery of amount based on the promissory note dated 11.12.2016 and prior to filing of plaint, there is registered correspondence between the parties and a legal notice was also issued by the plaintiff to the defendant/petitioner herein and the petitioner got issued a reply through his counsel specifically raising a contention which is as follows:

“That our client after receipt of the legal notice in question and on perusing the contents of the said legal notice our client surprised a lot and on his enquiries he came to know that the said Nagabhushana Rao is behind back of your client in dragging our client into this unnecessary litigation and the said Nagabhushana Rao is in the habit of filing false cases through his kith and kina against the innocent persons like our client and the said Nagabhushana Rao in order to gain illegally and to cause loss to our client and to harass our client out of the already lying empty promissory notes and empty cheques pertaining to our client he handed over the notice mentioned instruments to your client and got filled up the recitals of the instruments in the name of your client at the whims and fancies of your client and the said Nagabhushana Rao and by giving all false instructions to you got issued the legal notice in question. That your client is also a name lender of the instruments only and the said Nagabhushana Rao employed your client in dragging our client into unnecessary litigations through your client is being a stranger to our clients.”

In the written statement, after his appearance before the Court, raised the following contention:

“G. The defendant further humbly submits that basing on the Cr.No.45/2015 registered against Yarrasani Nagabhushan Rao with all detailed particulars, then he has no option to file cases basing on the empty signed promissory notes and empty signed cheques, he with a malafide motive handed over one promissory note and one cheque to the plaintiff who is not aware by him and did not saw any point of time and never received any cash consideration from him, thereafter the plaintiff got issued legal notice under Section 138 of N.I. Act on 13/3/2015 for which the defendant also issued suitable reply notice mentioning actual facts happened for the promissory note and cheque.”

H. The defendant most respectfully submits that Nagabhushan Rao is the back bone of the plaintiff and he is trying to file cases through his kith and kin in order to gain wrongfully as Cr.No.46/2015 is an obstacle to him. Like wise the said Nagabhushan Rao also got issued another legal notice through Konidala Vasu S/o Ramaiah, who is resident of Sujatha Nagar, Ongole for which also the defendant got issued suitable reply notice to him.”

The allegations made in ‘paragraph No.G’ are specific that the petitioner allegedly handed over blank signed promissory notes and cheques to Y. Nagabhushan Rao and said Y. Nagabhushan Rao, taking advantage of those promissory notes got filed a suit

and started litigation and got issued legal notice through the plaintiff/the respondent herein an filed suit though a crime was registered against him. When the petitioner specifically admitted that, he handed over blank signed promissory notes and cheques, he is not entitled to contend that the signed blank promissory notes are rank forgery, since the petitioner admitted his signature on the documents. The proposed amendment is totally inconsistent to the allegations made in 'paragraph No.G' of the written statement. However, the entire evidence is closed and at the stage of argument, the present petition is filed. But, in view of proviso to Order VI Rule 17 C.P.C, in the absence of any explanation that despite exercise of due diligence, he could not bring those facts on record before the court, the petitioner cannot be permitted to amend the written statement. In the entire affidavit, no explanation was offered though his failure to amend the written statement at appropriate stage i.e. before commencement of trial. Moreover, he filed a petition in I.A.No.303 of 2016 before the Court to refer the disputed signatures and promissory notes along with admitted signatures of the petitioner for expert for opinion. Even then, he did not realise the absence of any pleading with regard to forgery of signature on the promissory note i.e. documents sued upon. But, only when this Court made certain observations while disposing of C.R.P.No.4884 of 2016, the petitioner filed the present petition seeking leave of the Court to amend the plaint. Filing petition in I.A.No.303 of 2016 and prosecuting for a period of two years, without taking any steps, itself is suffice to conclude that this petitioner did not exercise due diligence.

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/her 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, provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial.

The intention of the Legislature in incorporating Order VI Rule 17 C.P.C is to avoid multiplicity of litigations, permitting the parties to amend their pleadings, at the same proviso is added to avoid unnecessary delay and to take steps at an early date.

In **J. Samuel v. Gattu Mahesh**¹, the Supreme Court laid down certain tests as to what is 'due diligence' with reference to Order VI Rule 17 C.P.C and proviso therefore and held as follows:

"3. 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.

14) A party requesting a relief stemming out of a claim is required to exercise due diligence and is a requirement which cannot be dispensed with. The term "due diligence" determines the scope of a party's constructive knowledge, claim and is very critical to the outcome of the suit.

¹ 2012 (2) SCC 300

In **Rameshkumar Aggarwal v. Rajamala Exports Private Limited and others**², the Apex Court relying on **Revajeetu Builders and Developers v. Narayanaswamy & Sons and others**³, 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.

- 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.

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.

² AIR 2012 SC 1887

³ 2009(8) SCJ 401

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 **Rajkumar Gurawara (Dead) Thr. Lrs vs M/S. S.K.Sarwagi & Co. Pvt. Ltd**⁴, the Apex Court laid down the following conditions to grant application for amendment subject to certain conditions:

- (i) when the nature of it is changed by permitting amendment;
- (ii) when the amendment would result in introducing new cause of action and intends to prejudice the other party;
- (iii) when allowing amendment application defeats the law of limitation.

Learned counsel for the petitioner relied on the judgment of the Apex Court in **Chakreshwari Construction Pvt. Ltd v. Manohar Lal**⁵. But, one of the Judges in the above judgment was also a member in the judgment rendered in **J. Samuel v. Gattu Mahesh** (referred supra) and the Apex Court held otherwise. In any view of the matter, in view of the admissions made in the written statement regarding handing over blank signed promissory notes to said Y. Nagabhushan Rao, this plea is not open at this stage, which is inconsistent to the main plea raised in paragraph 'G' of the written statement. Even if, the plea of the petitioner is true, regarding handing over all signed blank promissory notes and

⁴ 2008 (14) SCC 364

⁵ (2017) 5 SCC 212

cheques, the said Y. Nagabhushan Rao who is a holder of the document is entitled to fill the blanks in the promissory notes and utilize the promissory notes, as held in **Duggineni Seshagiri Rao Vs. Kothapalli Venkateswara Rao**⁶ the Division Bench of this Court, in para 6 as follows:

“Four things are necessary for an instrument to be a promissory note: 1) It should be in writing; 2) It should have an unconditional undertaking; 3) It should be signed by the maker; and 4) it should be in favour of certain person or to a bearer.

Section 20 makes inchoate stamped instruments legal instruments. The dictionary meaning of ‘inchoate’ is ‘incomplete’. So, incomplete stamped instruments are as good as the instruments mentioned in Section 4 of the Act. Even if one looks to the definition of the ‘promissory note’ under Section 4, one would find that the requirements for making an instrument a promissory note do not contain the requirement of naming a person, it can be given in favour of a certain person or to bearer of the instrument. That makes it clear that, one who is holding the document is the person who derives rights out of that instrument. In other words, it would mean that the document with first three requirements as stated above, should be delivered to the payee, once it is delivered it becomes a promissory note. Name and other particulars can be filled up even at a later stage. When one reads Section 4 in conjunction with Sections 20 and 42 that is the only interpretation that can be placed on the meaning of ‘promissory note’ under Section 4 of the Act. Section 20 lays down that when a person signs and delivers to another person a paper stamped in accordance with law relating to negotiable instrument it becomes a negotiable instrument even if it is wholly blank or written with incomplete particulars. Similarly, Section 42 even recognizes instrument issued in the name of fictitious person to be a valid instrument. Although Section 42 relates to bills but it also accepts that an acceptor of a bill of exchange even if it was drawn in a fictitious name it would create a genuine claim in favour of the holder. Therefore, even if a negotiable instrument is incomplete it would be a legal instrument provided it satisfies the first three conditions.

Holder of the instrument becomes a bearer of the instrument.”

Their Lordships further held as follows:

“The plaintiff had been able to prove the execution of the document. On the other hand, if the document was disputed or doubted the onus was on the defendant to show that the document was a forgery

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2001(6) ALT 95 (D.B.)

because a presumption is in favour of plaintiff under Section 118 of the Negotiable Instruments Act.”

In **Sukhminder Singh Vs. Nirbhai Singh**⁷, the High Court of Punjab & Haryana also laid down the same principle as held in **Duggineni Seshagiri Rao**¹ case.

In this regard, I am persuaded by the judgment of the High Court of Karnataka in **H.Maregowda and etc. Vs. Thippamma and others**⁸, wherein it was held as follows:

“A reading of Section 20 of the Negotiable Instruments Act which is extracted above will reveal that the words used are either wholly blank or having written thereon an incomplete negotiable instrument. Thus, even if a blank promissory note is given, it cannot be taken as a defence to avoid a decree based on such instrument, once it is found that the document produced before the Court satisfies the requirements of a promissory note within the meaning of the Negotiable Instruments Act. The instrument may be wholly blank or incomplete in particular; in either case, the holder has the authority to make or complete the instrument as a negotiable one.”

If, these principles are applied to the present facts of the case, the petitioner is not entitled to amend the written statement incorporating the plea of rank forgery of signature of the petitioner on the promissory note i.e. document sued upon. On the other hand, the petitioner miserably failed to bring those facts on record before the Court prior to commencement of trial. Thus, in view of the failure of this petitioner to establish that despite exercise of due diligence, he could not bring those facts to the notice of this Court. The amendment cannot be allowed at the stage when the entire evidence is closed and when the suit is posted for

⁷ AIR 2013 Punjab and Haryana page 77

⁸ AIR 2000 Kant 169

arguments. Hence, I find no ground to interfere with the order passed by the Trial Court.

In the result, the civil revision petition is dismissed at the stage of admission, while confirming the order in I.A.No.569 of 2016 in O.S No.734 of 2015 dated 13.02.2017 passed by the II Additional Senior Civil Judge (FTC), Guntur.

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

JUSTICE M. SATYANARAYANA MURTHY

Date: 31.10.2018

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