THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.5835 OF 2016

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India challenging the order dated 28.04.2016 passed in I.A.No.108 of 2015 in O.S.No.50 of 2008 by the Junior Civil Judge, Atmakur, whereby, the petition filed under Order VI Rule 17 of Civil Procedure Code (for short "C.P.C.") to amend the plaint, was dismissed.

The petitioner/plaintiff filed a petition under VI Rule 17 of C.P.C. seeking leave of the Court to amend the plaint alleging that by the date of filing the suit based on the information given by the Branch Manager of the Bank, the suit was valued at Rs.95,000/- but in the written statement it was mentioned by the defendant that there is an amount of Rs.6,00,000/- in the bank account and the same was also represented by the respondent before this Court in Civil Revision Petition preferred against the orders in O.P.No.47 of 2006. So, in order to claim the amount from the Bank, the petitioner also enquired with the present Branch Manager and that he also revealed that there is an amount of Rs.6,00,000/- available in the account. As the amount is public money collected from the donors, to claim the said amount, the plaint is required to be amended substituting Rs.6,00,000/- in the place of Rs.95,000/- in paragraph No.6 of the plaint and to substitute Court fee of Rs.8,426/- in place of Rs.3,346/-.

The respondent/defendant filed counter *inter alia* contending that the written statement was filed in the year 2008 and the petition is highly belated. In the written statement also it was mentioned that the valuation of suit is incorrect and misleading. If leave is granted to amend the plaint, it will take away the jurisdiction of Junior Civil Judge's Court and requested to dismiss the petition.

Upon hearing the argument of both the counsel, the trial Court dismissed the petition on various grounds.

Aggrieved by the order of the trial Court, the present revision is filed on the ground that the petitioner/plaintiff filed suit for mandatory injunction directing the defendant to credit the amount that is lying in his S.B. Account No.4522 of Andhra Bank, Srisailam that was credited from 31.08.2006 to 07.07.2007 to the account of the plaintiff S.B.Account No.6588, Srisailam, Andhra Bank and obtained temporary injunction in I.A.No.165 of 2008. Against the orders in I.A.No.165 of 2008, the defendant preferred C.M.A.No.04 of 2011, but the same was dismissed on 17.02.2012, against which the defendant preferred C.R.P.No.2606 of 2012 and the same was also dismissed. On coming to know about lying of Rs.6,00,000/- to the credit of S.B.account, the petition is filed seeking leave of the Court to amend the plaint and that the proposed amendment would not cause any prejudice to the respondent/defendant, consequently, the dismissal of the petition by the trial Court is erroneous and prayed to set aside the same and allow the revision.

Learned counsel for the petitioner relied on "***Revajeetu Builders and Developers v. Narayanaswamy & Sons and others***[1]" and on the basis of the guidelines laid down in the said judgment, he requested to allow the petition granting leave to amend the plaint.

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[1] (2009) 10 SCC 84

In "***Revajeetu Builders and Developers v. Narayanaswamy & Sons and others"*** (referred supra) the Apex Court held that 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?
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> 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.

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."

Order VI Rule 17 of C.P.C deals with Amendment of Pleadings and according to it, the Court may at any stage of the proceedings allow either party to alter or amend his 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 in spite of due diligence, the party could not have raised the matter before the commencement of trial.

The suit is filed for mandatory injunction directing the defendant to credit the amount lying in his S.B.Account No.4522 of Andhra Bank, Srisailam that was credited from 31.08.2006 to 07.07.2007 to the account of plaintiff S.B. Account No.6588 Srisailam, Andhra Bank. According to the allegations made in the plaint, the amount lying in S.B.Accoutn was only Rs.95,000/-. Instead of filing the suit for appropriate relief of recovery of amount, the suit is filed for mandatory injunction circumventing the law. In any view of the matter, the suit is valued at Rs.95,000/- since the relief can be valued in monetary terms. Now, the contention of the petitioner is that an amount of Rs.6,00,000/- is lying to the credit of S.B.Account No.4522 of defendant in Andhra Bank, Srisailam collected from 31.08.2006 to 07.07.2007. When the suit filed for mandatory injunction, the limitation is for three (3) years as per residuary Article in the Limitation Act, in such case the amendment sought in the year 2015 was barred by limitation.

In "***Revajeetu Builders and Developers v. Narayanaswamy & Sons and others***" (referred supra) the Apex Court laid down six guidelines and guideline No.6 made it clear that 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. If this principle is applied to the present facts of the case, claim for mandatory injunction for Rs.6,00,000/- is hopelessly barred by limitation as on the date of filing of the petition.

Learned counsel for the petitioner contended that the defendant admitted in the written statement that an amount of Rs.6,00,000/- was lying in the account. Even if, the limitation starts from the date of filing written statement, the claim of the petitioner is hopelessly barred by limitation and such time barred amendments cannot be permitted in view of the law laid down by the Apex Court in "***Revajeetu Builders and Developers v. Narayanaswamy & Sons and others***" (referred supra).

In view of my foregoing discussion, I find no ground to set aside the order passed by the trial Court. Consequently, the revision is liable to be dismissed.

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

Consequently, miscellaneous applications pending if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

08.11.2018
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