

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.6492 OF 2016

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.492 of 2015 in O.S.No.128 of 2007 dated 11.04.2016 passed by the XII Additional Chief Judge, City Civil Court, Secunderabad, wherein, I.A.No.492 of 2015 was filed under Section 148 r/w Section 151 C.P.C for condonation of delay in carrying out the consequential amendment to plaint in pursuance of the order in I.A.No.2504 of 2010 dated 13.09.2012.

The petitioner herein is the fourth respondent and the first respondent herein is the petitioner in I.A.No. 492 of 2015.

The first respondent herein filed I.A.No.492 of 2015 for condonation of delay in carrying out the consequential amendment to plaint in pursuance of the order dated 13.09.2012 in I.A.No.2504 of 2010, alleging that petitioner herein and the defendants 2 to 6 are the brothers, sisters and children of one late B. Shankaraiah and the second respondent herein. B. Shankaraiah died intestate on 17.07.2006 leaving behind his wife and children to succeed the properties described in suit schedules 'A' to 'G'. Further, the first respondent herein filed O.S.No.128 of 2007 for partition of the suit schedule properties 'A' to 'G'. During

the lifetime of his mother, defendants 3 to 5 started hatching plans to knock away as much property as possible at the cost of the other family members. In those circumstances, the first respondent herein was constrained to file O.S.No.128 of 2007 for partition and separate possession with respect to his 1/7th share in suit schedules 'A' to 'G' properties during the life time of his mother i.e. defendant no.1. Later, the first respondent died on 02.05.2010 and the first respondent herein became entitled to 1/6th share in the suit schedule property.

It is alleged that, the first respondent did not implead all the tenants of different portions in suit schedules 'A' to 'G' properties, because he was not properly guided by his previous counsel on record. Later, the first respondent herein insisted to implead the defendants 8 to 29 in the above suit as defendants, as they were paying rents to defendants 3 to 5. The first respondent was constrained to file I.A.No.2504 of 2010 to implead defendants 8 to 29 and the same was allowed on 13.09.2012 permitting the first respondent herein to implead them as defendants 8 to 29 to the suit, without carrying necessary consequential amendments in pleadings of the plaint. Further, the first respondent came to know about the necessity to carry out consequential amendments within 14 days from the date of order, as the previous counsel on record neither informed the same nor carried out necessary consequential amendments to the plaint. In view of the same, there is a delay of

1040 days as on 03.08.2015 and it was not due to his fault, but due to negligence and irresponsibility of previous counsel and that there is a sufficient cause which prevented the first respondent to carry out consequential amendment prayed to condone delay in carrying out the consequential amendment.

The petitioner herein/fourth respondent filed counter, denying material allegations in the affidavit filed along with I.A.No.492 of 2015, *interalia* contending that, there are no grounds to condone delay in carrying out the consequential amendment to the plaint and in fact, the consequential amendments shown in the affidavit in the petition in I.A.No.2504 of 2010 were carried by the previous counsel on record and thereby, question of again carrying out the consequential amendments does not arise and that there is no consequential relief sought in I.A.No.2504 of 2010 and the question of condoning delay does not arise. Even in the affidavit also, no where it is mentioned about what is consequential amendment that is to be carried out in the plaint and in the absence of any consequential amendment to the petition filed under Order I Rule 10(2) C.P.C, the first respondent herein cannot be permitted to carry out any sort of amendments in the guise of consequential amendments and prayed to dismiss the petition.

The Court below allowed I.A.No.492 of 2015 only recoding the following reason:

“Suit is filed for partition and according to the respondents they are the owners of the suit schedule property and which is denied by the petitioners therefore unless and until the tenants are made as parties the question of depositing rents and sharing the rents cannot be decided. Therefore I am of the opinion that though there is inordinate in carry out the amendment and petitioner and advocate were not diligent in carryout, Keeping in view and principles of natural justice I am inclined to condone the delay of 1040 days and petitioner to carryout amendment within a week from the date of this order.”

Aggrieved by the order in I.A.No.2504 of 2010 dated 13.09.2012, the present civil revision petition is filed on various grounds.

The main ground urged before this court is that, when I.A.No.2504 of 2010 was allowed on 13.09.2012, which contained a consequential amendment and carried out by the previous counsel on record in the original plaint, question of again carrying out consequential amendment in the plaint in pursuance of the order in I.A.No.2504 of 2010 dated 13.09.2012 does not arise and in fact, no consequential amendment to the plaint in I.A.No.2504 of 2010 was sought for, except arraying the tenants as defendants and the same was carried out, in such case, the question of carrying out consequential amendment to the plaint does not arise and therefore, the reason assigned by the Court below is erroneous

and prayed to set-aside the order in I.A.No.492 of 2015 dated 11.04.2016, while allowing this civil revision petition by exercising power under Article 227 of the Constitution of India.

During hearing, learned counsel for the petitioner herein Sri P. Shiv Kumar contended that the proposed amendment/ consequential amendment mentioned in a petition filed in I.A.No.2504 of 2010 was already carried out in the plaint on 27.02.2012 and it is clear from the copy of the amended plaint filed along with this revision petition and when the amendment was already carried out, question of again carrying out consequential amendment after condoning delay of 1040 days does not arise and the Court below even without applying its mind to the facts and circumstances of the case and rules governing consequential amendment in the Civil Rules of Practice and effect of Order I Rule 10(2) C.P.C, committed an error in allowing the petition to condone delay and permitted the first respondent/ petitioner to carry out the consequential amendment.

Learned counsel for the first respondent supported the order of the Court below in all respects, while contending that the tenants in occupation of various items of the properties were impleaded as parties to the suit, as the petitioner herein was collecting rents from those tenants in occupation and appropriating for himself. Apart from that, the previous counsel on record before the Trial Court did not take steps to carry out

consequential amendment in the plaint as a consequence of impleading defendants 8 to 29 in O.S.No.128 of 2007, though it is required to be carried out within 14 days from the date of order, as per Order VI Rule 18 C.P.C, and the first respondent herein was not equipped with legal procedures, thereby, there is an inordinate delay in carrying out consequential amendment to the plaint and for the mistake of the previous advocate on record, party should not suffer and prayed to dismiss the present civil revision petition.

Considering rival contentions and perusing the material available on record, the point that arose for consideration is”

***“Whether the first respondent carried out consequential amendment mentioned in I.A.No.2504 of 2010 within the time prescribed under Order VI Rule 18 C.P.C. If not, whether the first respondent be permitted to carry out the amendment after condoning the delay of 1040 days in carrying out the consequential amendment.*”**

P O I N T:

Admittedly, O.S.No.128 of 2007 was filed by the first respondent/petitioner against the seven defendants claiming partition of and separate possession of suit schedule property and it is being contested by the petitioner herein and others by filing written statement. During pendency of the suit, the first respondent/petitioner filed I.A.No.2504 of 2010 so as to claim rent from the other defendants, as they were not paying rent to him,

despite raising an objection by him for payment of rent to the first petitioner herein. I.A.No.2504 of 2010 was allowed by order dated 13.09.2012 permitting the first respondent herein to implead the tenants in occupation, as defendant nos.8 to 29 to the suit. As a consequence of ordering I.A.No.2504 of 2010, the counsel for the first respondent carried out the amendment on 27.02.2012. But, still, the first respondent sought to condone delay in carrying out consequential amendment to the plaint, raising several contentions.

In view of the specific prayer by the first respondent/petitioner, it is required to be examined as to when consequential amendment is to be carried out and when it does arise.

The orders passed under Order I Rule 10(2), Order VI Rule 17 & Order XXII necessitates consequential amendment to the pleadings i.e. either in the plaint or written statement. According to Rule 28 of Civil Rules of Practice, under Order I Rule 10(2), Order VI Rule 17 & Order XXII C.P.C, a petition shall contain relief of consequential amendment and if the petition does not contain the consequential relief, the Court shall reject the petition.

Rule 28 of The Andhra Pradesh Civil Rules of Practice and Circular Orders, 1990 (for short 'Civil Rules of Practice') is extracted hereunder, for better appreciation of the case:

“An application for amendment made under Order I, Rule 103, Order VI, Rule 17, or Order XXII of the Code, shall also contain a prayer for all consequential amendments. The Presiding Officer shall reject the application if it is not in accordance with the law or these rules. Provided that verbal corrections may at any time be made in pleadings with permission of the Court.”

In view of the mandatory requirement as per Rule 28 of the Civil Rules of Practice, the first respondent in I.A.No.2504 of 2010 while seeking leave of the court to implead the respondents 8 to 29 in the said interlocutory application, as defendants 8 to 29 in O.S.No.128 of 2007, claimed the following consequential amendment to the plaint; which is extracted hereunder:

Consequential amendment under Rule 28 CRP

Hence it is further prayed that this Hon'ble Court may be pleased to permit the petitioner/plaintiff to amend the cause title in O.S.No.128 of 2007 by adding the following proposed defendants 8 to 29 as defendants Nos.8 to 29 in the interest of justice.

1. M/s. Deccan Diesels, Srinivasa Building and 19 others”

When the first respondent/petitioner sought consequential amendment in a petition filed under Order I Rule 10(2) C.P.C, the Trial Court allowed the application by exercising power under Order I Rule 10(2) C.P.C r/w Rule 28 of Civil Rules of Practice. The said amendment was carried out in the plaint on 27.02.2012 as appearing in the plaint. Therefore, the question of again carrying out amendment after condonation of delay does not arise.

According to Order VI Rule 18 C.P.C, if a party who has obtained an order for leave to amend does not amend accordingly within the time limited for the purpose, by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.

Thus, any consequential amendment permitted by the Court shall be carried out within fourteen days from the date of order or within the specified time as directed by the Court.

Therefore, in view of the language used in Order VI Rule 18 C.P.C, the first respondent sought for extension of time by condoning delay. In fact, I.A.No.2504 of 2010 was filed only for condonation of delay of 1040 days for carrying out the amendment. But, instead of filing such petition, for condonation of delay, the first respondent ought to have filed an application for extension of time for carrying out the amendment. All the more, question of carrying out consequential amendment in view of the order passed in I.A.No.2504 of 2010 does not arise, as the consequential amendment was already carried out in the plaint. When consequential amendment sought for in I.A.No.2504 of 2010 was already carried out by the previous counsel on record, as stated supra, question of further extension of time or condonation of delay in carrying out the amendment is wrong or misconceived.

But the Court below even without advertting to the order passed in I.A.No.2504 of 2010 and carrying out the consequential amendment, permitted by the Court, as mentioned in I.A.No.2504 of 2010, simply granted permission to carry out the amendment condoning the delay of 1040 days. The order passed by the Court below is *exfacie* erroneous, since the order was passed without applying mind to the facts of the case, as observed herein above. Therefore, the order passed by the Court below in condoning the delay in granting permission is erroneous. Hence, the order passed by the Court below permitting the first respondent to carry out the amendment after condoning delay recording a specific reason extracted above, is a patent illegality.

This court can exercise revisional jurisdiction under Article 227 of the Constitution of India in limited circumstances and nature of the jurisdiction is supervisory over the subordinate courts or the tribunals under the control of the High Court. The power of revision under Article 227 of the Constitution of India is limited to find out whether the order under challenge, passed by the subordinate court or tribunal within their jurisdictional limits and the main intention of exercising both administrative and judicial control under Article 227 of Constitution of India is to keep them within the bounds of their jurisdiction and not to allow them to transgress from their jurisdictional limits, but not otherwise.

The Court can exercise jurisdiction under Article 227 of the Constitution of India under the following circumstances:

- "a) When the inferior court assumes jurisdiction erroneously in excess of power.
- b) When refused to exercise jurisdiction.
- c) When found an error of law apparent on the face of record.
- d) Violated principles of natural justice.
- e) Arbitrary or capricious exercise of authority or discretion.
- f) Arriving at a finding which is perverse or based on no material.
- g) A patent or flagrant error in procedure.
- h) Order resulting in manifest injustice.
- i) Error both on facts and law or even otherwise."

Similarly, the Court cannot exercise its discretion under Article 227 of the Constitution of India in the following circumstances:

- "a) Where the only question involved is one of interpretation of deed;
- b) On question of admission or rejection of particular piece of evidence, even though the question may be of everyday recurrence;
- c) To correct erroneous exercise of jurisdiction, as a Court of revision;
- d) To set aside an intra vires finding of the fact, except where it is founded on no material or is perverse;
- e) To correct an error of law, not being an error apparent on the face of the record;
- f) To interfere with the intravires exercise of discretionary power, unless it is violative of principles of natural justice;
- g) The Court shall not interfere on a merely technical ground which would not advance substantial justice."

Article 227 of Constitution of India deals with power of superintendence by the High Court over all Subordinate Court and Tribunals. The power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only, but includes the power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law, rather power under this Article is wider than that of Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction and such power can also be exercised *suo motu*. It is a well settled principle that the High Court can exercise supervisory power under Article 227 of Constitution of India, as held by the Apex Court in **State (N.C.T. Of Delhi) v. Navjot Sandhu@ Afsan Guru**¹ that under Article 227 of Constitution of India the High Court can interfere with the directions of the Subordinate Courts.

In view of the powers conferred on this Court by Article 227 of the Constitution of India, the order in I.A.No.492 of 2015 in O.S.No.128 of 2007 dated 11.04.2016 passed by the XII Additional Chief Judge, City Civil Court, Secunderabad, is hereby set-aside, holding that the order passed by the Court below is illegal *exfacie*.

¹ AIR 2005 SC 3820

In the result, the civil revision petition is allowed.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:23.02.2018

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