**THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

**Civil Revision Petition Nos.5526, 5532 and 5542 of 2016**

**COMMON ORDER**:

The unsuccessful respondent – plaintiff is the revision petitioner in all these three revisions.

1.1 In CRP.Nos.5526 and 5532 of 2016, the plaintiff assailed the order & docket order, dated 04.03.2016, of the learned II Additional Senior Civil Judge, Kakinada, passed respectively in IA.No.716 of 2015 and IA.No.718 of 2015 in OS.No.88 of 2015 whereby the afore-said applications filed by the defendant for amendment of the written statement and to accord permission to file certain documents to substantiate the proposed defence, which is being sought to be incorporated by way of amendment of the written statement, were allowed.

1.2 Thereafter, the defendant filed IA.No.318 of 2016 requesting to decide the issue related to jurisdiction as a preliminary issue. The learned II Additional Senior Civil Judge, by orders, dated 03.09.2016, allowed the above said application. Aggrieved of the said orders, the plaintiff filed the third CRP.No.5542 of 2016.

2. I have heard the submissions of Ms. M.L. Neelima, learned counsel representing Sri G. Krishna Murthy, learned counsel appearing for the revision petitioner – plaintiff ['the plaintiff, for brevity]; and of Sri Y. Vasudeva Rao, learned counsel appearing for the respondent – defendant ['the defendant', for brevity]. I have perused the material record.

3. The basic facts are as under: "The plaintiff filed the suit against the defendant on the basis of two promissory notes for Rs.2,50,000/- each said to have been executed by the defendant in his own hand. The defendant filed a written statement resisting the suit. During the pendency of the suit, the defendant filed IA.No.716 of 2015 for amendment of the written statement. The same was resisted by the plaintiff. However, the trial Court permitted the defendant to amend the written statement. Thereafter, the trial Court by allowing the defendant's request accorded permission to the defendant to file documents to substantiate the defence, which was permitted to be incorporated in the written statement by way of amendment. Later, the trial Court granted the further request of the defendant to decide the jurisdictional issue, which arose for adjudication in view of the permission granted for amendment of the written statement, as a preliminary issue. Therefore, if the first CRP viz., CRP.No.5526 of 2016, wherein the subject matter is with regard to the amendment of written statement is to be dismissed, as a sequel, the other two revision petitions are also to be dismissed. On the other hand, if the first revision is to be allowed, and as a sequel, the application filed seeking permission to amend the written statement is to be dismissed, consequently, the other two revision petitions deserve to be allowed. Hence, these commons orders."

4. The case of the defendant in support of his request for amendment of the written statement, in brief, is this:

The suit is filed for recovery of Rs.6,59,881/- on the basis of two promissory notes. Two important aspects relating to the suit matter were not mentioned in the written statement, as the same were omitted while typewriting the written statement. The first one relates to jurisdiction. The suit transaction arose out of business dealings between the parties. The plaintiff was appointed as a distributor in goods viz., electronic voltage stabilizers, which were sold to the plaintiff by the defendant during the year 2012. The goods were loaded into a lorry; along with the receipts, the invoices for supply of goods were sent either through courier or by post. In the invoices it is clearly mentioned that all the disputes are subject to Hyderabad jurisdiction. The invoice being an agreement between the parties is binding on the plaintiff also. The invoices are filed in support of the said case of the defendant. Hence, the Court at Kakinada has no jurisdiction to try and dispose of the suit. The second aspect is as to the place of execution of the promissory notes. Actually the promissory notes were executed at Chennai. The defendant has taken the plaintiff and his family, along with other dealers, on business promotion tour, to Thailand, on 09.02.2012. The amount of Rs.5,00,000/- as mentioned in the promissory notes was remitted by the plaintiff to the defendant firm's (S.G.B.Agencies) bank account by RTGS through ICICI Bank, Hyderabad, on 04.02.2012. While returning from the tour, on 16.02.2012, the plaintiff and the defendant including all the other dealers stayed in a hotel at Chennai. As a proof of payment of Rs.5.00 lakhs, the plaintiff requested the defendant to sign on the promissory notes, which were actually antedated. In view of the cordial relationship at that time, without suspecting the *mala fide* intention of the plaintiff, this defendant signed and executed the two promissory notes. In the main body of the plaint, place of execution of the promissory notes is nowhere mentioned. Only in the cause of action paragraph, for the purpose of jurisdiction, it is stated that the transactions took place in the house of the plaintiff. The said allegation is false. The amendment of the written statement is necessary in view of the said two aspects. The omission to include these two aspects was only due to clerical mistake and is not wilful. Serious prejudice would be caused to the defendant if the amendment of the written statement is not permitted. The above said two aspects came to light when the counsel for the defendant is preparing for cross-examination of the plaintiff. Since the trial has not commenced, no prejudice will be caused to the plaintiff if the amendment sought for is permitted. Hence, the petition is filed for amendment of the written statement.

5. The case of the plaintiff, in brief, is this:

The material averments in the affidavit of the defendant are false. The documents, which the defendant filed along with the application for amendment, are not related to and not connected with the suit transaction. The suit transaction is an independent transaction at personal level between the parties. The defendant is intending to take advantage of the business transactions between the plaintiff and the defendant's firm, Sri Venkata Aditya Agencies, Kakinada, to gain wrongfully with the help of concocted and fabricated documents. In the paragraph 6 of the written statement, the defendant has already taken a plea that the suit transaction is a money transaction between the parties at personal level and as such the plaintiff is not entitled to claim interest at commercial and usurious rates. Therefore, the petition may be dismissed.

6. At the hearing, learned counsel for the plaintiff contended as follows: - 'The defendant is taking new pleas by way of amendment to the written statement; the same are contrary to the original pleadings in his written statement, wherein the defendant admitted that the money transactions between the parties are at personal level. The suit transaction is not a business transaction and it only arose out of personal acquaintance between the parties. Though the defendant can take inconsistent alternative pleas, the alternative pleas that may be raised by the defendant cannot be mutually destructive. The Court below, without considering the contentions of the plaintiff, allowed the defendant's application for amendment of the written statement and thereby permitted the defendant to withdraw an admission and/or take a plea contrary to the admission made in the original written statement. The suit promissory notes were executed by the defendant in his own hand. It is recited in the suit promissory notes that the same are executed at Vetlapalem. The defendant did not deny his signatures and also the execution of the promissory notes in his written statement and that the promissory notes were in his hand writing. The promissory notes were executed in his personal capacity but not as a representative/proprietor /authorized signatory of any firm. Therefore, the suit transaction is exclusively a personal transaction and not a business transaction. The defendant did not assign any reasons for not initially incorporating the proposed pleadings in the original written statement. The plaintiff specifically stated in the legal notice as well as in the plaint that the promissory notes were executed by the defendant in his own hand writing. The proposed amendment is an after thought and is intended to harass the plaintiff. By way of seeking amendment, the defendant is trying to introduce

totally a different and a new case, which is inconsistent with his original defence and is changing the jurisdiction of the Court. The same is untenable. Admissions made in the pleadings cannot be allowed to be withdrawn by way of an amendment, as withdrawal of pleadings amounts to displacing the case of plaintiff and causes irretrievable prejudice to the plaintiff. The defendant cannot be permitted to amend the written statement and raise a plea, which is totally inconsistent with his earlier defense. The invoices of Venkata Aditya Agencies of the defendant will not decide the jurisdiction of the Court when the suit transaction is out of the purview of the said invoices and when the suit transaction is only personal transaction but not a business transaction. The trial Court committed a material irregularity in not considering the case of the plaintiff and in allowing the amendment. The trial Court had also committed a grave error in allowing the subsequent two interlocutory applications filed by the defendant.'

7. Per contra, learned counsel appearing for the defendant, while supporting the orders of the Court below, contended as follows: 'In the suit promissory notes itself it is mentioned that the moneys were borrowed for business capital. The said fact indicates that the transactions are not at personal level between the parties and that the transactions are business transactions. The defendant is not withdrawing any admissions. The merits of the proposed amendment cannot be considered while considering the request that is made for permission to amend the written statement. The application for amendment is filed for permission to amend the written statement by incorporating the proposed defence pleas only to elaborate the defence already taken and not for withdrawal of the admissions. The defendant can take

inconsistent pleas in the written statement. The amendment of the written statement stands on a different footing than that of the amendment of the plaint. Though the plaintiff is not entitled to take inconsistent pleas, the defendant can take such pleas in the written statement. The trial Court, in the facts and circumstances of the case, is justified in allowing the defendant to amend the written statement and in passing the consequential orders in the later two interlocutory applications.

8. Both the learned counsel fairly stated that the result of the first revision petition will have a bearing on the other two revision petitions and that in the event the first revision petition is to be dismissed the other two revisions are also liable for dismissal, as a sequel, and *vice versa.*

9. I have given earnest consideration to the facts and submissions.

10. Before proceeding further, it is profitable to refer to the settled legal position applicable generally to cases dealing with requests for amendment of written statement. Amendment of written statement stands on a different footing than that of the amendment of the plaint. The Courts will be liberal while allowing amendments of written statement. Mere delay in seeking amendment is no ground to refuse any amendment. The defendant can take inconsistent pleas in his written statement and an amendment introducing pleas inconsistent with the original pleas, which are alternative to the original pleadings can be permitted. An amendment of the written statement cannot be refused on the ground that the pleas in the proposed amendment are inconsistent with the original pleadings in the written statement when such pleas are alternative pleas. An amendment, which is intended to elaborate a

defence, which is already taken in the written statement, is permissible. At the time of considering the prayer for amendment of written statement, it is not open to the Court to go into the merits of the contentions in the proposed amendment. When the amendment is necessary for a decision on the real controversy between the parties in the suit, such an amendment is generally permitted.

10.1 In support of the some of these settled principles, learned counsel for the defendant placed reliance on the following decisions: **(1) Andhra bank v. ABN Amro Bank N.V. and others**[1]**; (2) Shree Subhlaxmi Fabrics Pvt.Ltd., v. Chand mal Baradia and others**[2]**; and, (3) Baldev Singh and others v. Manohar Singh and another**[3]

10. 2 Continuing to deal with the settled propositions of law, it is pertinent to note that any amendment of the pleadings (be it of the plaint or the written statement) designed to withdraw an admission made in the original pleading cannot be permitted. Amendment introducing entirely a different or a new case and an amendment, which seeks to displace the plaintiff completely from admissions made by the defendant in the written statement, and which would prejudice the plaintiff cannot be permitted. When the amendment sought was of such nature as to displace the plaintiff's case it should not be allowed as ruled in the decision of the Supreme Court in **Modi Spinning & Weaving Mills Co.Ltd., v. M/s.Ladha Ram & Co.**[4]

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[1] AIR 2007 SC 2511
[2] AIR 2005SC 2161
[3] AIR 2006 SC 2832
[4] (1976) 4 SCC 320

11. This Court shall now revert to the facts of the instant case. The plaintiff admittedly filed the suit on the basis of two promissory notes. Prior to the institution of the suit, the plaintiff issued a legal notice. Notices were exchanged. It is no doubt true that in the promissory notes it is mentioned that the amounts were borrowed for business purposes. The promissory notes also reflect that they were executed at Vetlapalem. In the plaint, it is also stated that the defendant executed the suit promissory notes at Vetlapalem, a place within the territorial jurisdiction of the trial Court at Kakinada. In the written statement, the defendant pleaded as follows:

> 'This defendant is carrying on business of marketing electronic voltage. The defendant had given distribution for East & West Godavari District to the plaintiff in the name of Sri Venkata Aditya Agencies. The facts are that there have been business dealings between the plaintiff and defendant for quite sometime. <u>In view of the personal acquaintance and intimacy, the plaintiff had advanced a sum of Rs.5.00 lacs on 04.02.2012.</u> It is denied that the said amount was to be repaid with interest @ 30% P.A. This clause was inserted in the suit document only to bring pressure on this defendant to make wrongful gain by the plaintiff. <u>After sometime, the plaintiff and defendant settled the matter in presence of friends and well wishers on 15.11.2013. The amount due by the plaintiff to the defendant was arrived at Rs.4,15,968/- while so the amount due by the defendant is quantified as Rs.7,67,083/-. In order to settle the matter, a sum of Rs.3,50,000/- was paid through NEFT on 01.02.2014 & 10.06.2014. The plaintiff had specifically agreed that he is not claiming the balance of Rs.1,115/- in view of their past association to close the matter. Thus the account between the parties was closed.</u> The plaintiff has clearly admitted receipt of Rs.3,50,000/- in his plaint. The original documents relating to

settlement dated 15.11.2013 is in the custody of plaintiff and he is called upon to produce the same.'

[Reproduced verbatim]

The defendant further pleaded in his written statement as follows:

"It is submitted that the present suit is only offshoot of money transactions between the plaintiff and defendant. As already explained the account was settled by payment of rs.3,50,000/- on dates 01.02.2014 & 10.06.2014 since the account was settled by mutual consent and there are no further dues to be paid to the plaintiff. It is submitted that on the date of settlement of account this defendant requested to return the pronotes dated 4.2.2012 (2 pronotes of same date). However on the ground that it is not readily available at that time the plaintiff avoided to return the document. In view of the differences arisen between them with regard M/s. Karthik Agencies the plaintiff is taking undue advantage and misusing the same."

[Reproduced verbatim]

It is also pleaded in paragraph 6 of the written statement as follows:

It is submitted that with regard to interest claimed, it is not only onerous but is not tenable in the eye of law. There is no contract to pay interest @ 30% p.a., between the parties. The calculation made of the amount due by the defendant to the plaintiff is incorrect and untenable. Having settled the account by receiving Rs.3,50,000/- in full and final settlement of all his claims, the plaintiff is not entitled to once again claim interest. Moreover the money transaction between the parties is at personal level and as such the plaintiff is not entitled to claim interest @ commercial and usurious rates."

[Reproduced verbatim]

The proposed amendments of the written statement as stated in the proposed paragraphs 7(a) & 7(b) read as under:

> "7(a). It is submitted that the suit transaction arise out of business dealings between the plaintiff and defendant. The plaintiff was appointed as distributor for electronic voltage stabilizer in Kakinada by the defendant. The goods was sold invoices were issued for the same. As per the terms of supplies, it is clearly mentioned in the invoices that all the disputes are subject to Hyderabad jurisdiction. The invoice being an agreement between the parties is binding on the plaintiff. Hence this Hon'ble Court has no jurisdiction to try and dispose of the present suit as only the Courts of Hyderabad have the jurisdiction.
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> 7(b) It is submitted that the sum of rs.5 lakhs was transferred by RTGS by the plaintiff through ICICI Bank, Hyderabad. The suit pronotes were executed at Chennai on 16.02.2012. The plaintiff has suppressed this fact in the body of the plaint. It is denied that the suit transaction took place at Vetlapalem in the house of the plaintiff as stated in the plaint. On this ground also the Hon'ble Court has no jurisdiction to try and dispose of the suit."
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> [Reproduced verbatim]

12. If the pleading in the original written statement (including the portions to which emphasis is supplied) and the pleadings in the proposed amendment, (including the portions to which emphasis is supplied), which are both extracted supra, are examined in juxtaposition it is evident that the defendant is withdrawing the admissions made in the original written statement by way of the proposed amendment. It is apt to note a few instances in this regard.

12.1 Firstly, the defendant has taken a plea of discharge and stated that the plaintiff and the defendant settled the matter in the presence of friends and well wishers, on 15.11.2013, and that the plaintiff specifically agreed that he is not claiming the balance of Rs.1,115/- in view of their past association and closed the matter and that the account between the parties is closed and that the plaintiff clearly admitted the receipt of Rs.3,50,000/- in the plaint. It is also stated in the written statement that the present suit is only offshoot of the money transactions between the plaintiff and the defendant and that since the account was settled by mutual consent there are no further dues due to the plaintiff and that on the date of settlement of account, the defendant requested to return the pronotes, however, on the ground that they are not readily available at that time the plaintiff avoided to return the documents and that since the plaintiff settled the account by receiving Rs.3,50,000/- in full and final settlement of all his claims plaintiff is not once again entitled to claim and that moreover the money transaction between the parties is at personal level and as such plaintiff is not entitled to claim interest at commercial and usurious rates.

12.2 In contrast, by way of the proposed amendment, the defendant now wants to incorporate in the written statement the defence to the effect that the suit transaction is with regard to business dealings between the plaintiff and the defendant in which the plaintiff was appointed by the defendant as distributor of electronic voltage stabilizers in Kakinada and that the invoices related to the said business transactions contain a clause that the Courts at Hyderabad are only having jurisdiction and that, therefore, the Court at Kakinada is not having jurisdiction. The proposed amendment of the written statement further reflects that the suit pronotes were executed at Chennai, on 16.02.2012.

Therefore, it is clear that the proposed amendment in the written statement is in the nature of resiling from the admissions made in the original written statement and withdrawing the admissions. Therefore, though the defendant can take inconsistent pleas, the effect of proposed pleas shall not be in the nature of withdrawing admissions in the original pleading and the defendant under the guise of taking inconsistent pleas or alternative pleas cannot seek to displace the plaintiff completely from the admissions made in the original written statement as allowing such a course would irretrievably prejudice the plaintiff. The view of this Court finds support from the decision of the Supreme Court rendered by three Hon'ble Judges in **Modi Spinning & Weaving Mills** [4 supra]. The facts of the cited case are as follows: "In the original written statement paragraph 25 & 26 the defendant, having taken certain pleas, filed an application for amendment three years thereafter for deletion of those paragraphs and for substitution of two new paragraphs. One of the reasons assigned by the trial court for rejection of the request of the defendant is that the defendant wanted to resile from admissions made in paragraph 25 of the written statement. The trial Court also said that 'the repudiation of the clear admission is motivated to deprive the plaintiff of the valuable right accrued to him and it is against law'. Having regard to the facts, the Supreme Court held as follows:

> "It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paragraphs 25 & 26 is not making inconsistent and alternative pleadings but it is seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. If such amendments are allowed the plaintiff will be irretrievably prejudiced by being

> denied the opportunity of extracting the admission from the defendants. The High Court rightly rejected the application for amendment and agreed with the trial Court."

13. Be it noted that the pleadings in the original written statement and the proposed amendment are extracted and examined by this Court only for the purpose of highlighting the aspect as to whether the proposed amendments, if permitted, would displace the plaintiff completely from the admissions made by the defendant in the written statement and that if such amendments sought for are allowed, the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendant. The said course, which was necessary and was adopted, may not be mistaken as an exercise dealing with the merits of the proposed amendment. This Court has not at all dealt with the merits of the contentions in the proposed amendments. Be it next noted that the trial Court failed to examine the original pleadings in the written statement and the proposed amendments in juxtaposition and also the contention of the plaintiff that if the proposed amendment is allowed it would displace the plaintiff's suit and deprive the plaintiff of valuable right already accrued to the plaintiff and would give an opportunity to the defendant to withdraw the admissions. The trial Court without examining the crucial aspects, simply considered the contention of the defendant that due to oversight the plea regarding jurisdiction of the Court and about the execution of blank promissory notes was not mentioned in the written statement and held that it is appropriate to give an opportunity to the petitioner – defendant to contest the matter in all angles and that allowing of the amendment would not cause prejudice to the plaintiff. It is also apposite to mention that no doubt it was recited in the two promissory notes that the monies were borrowed for

'business purpose'. The defendant may, if he so desires, rely upon the said recitals. However, these recitals of which the defendant is aware do not give a lee way to the defendant to withdraw the admissions already made or take a new defence which, if permitted, would displace the plaintiff completely from the admissions made by the defendant in the written statement. In the considered view of this Court, for the reasons afore-stated and the legal position obtaining, the reasoning of the trial Court does not stand the test of scrutiny.

14. On the above analysis and for the reasons aforestated, this Court finds that the CRP.No.5526 of 2016 deserves to be allowed and the order impugned therein deserves to be set aside.

15. In the result, CRP.No.5526 of 2016 is allowed and the impugned order is set aside. As a sequel, IA.No.716 of 2015 filed by the defendant for amendment of the written statement is dismissed. Since it is stated that the amendment is already carried out, the trial Court shall take steps for deletion of the new pleadings already incorporated by way of amendment in the original written statement of the defendant.

16. Since the request for amendment of written statement is now negatived, no issue with regard to the jurisdiction would arise and the necessity for the defendant to file any documents to substantiate the said plea does not also arise for consideration. Therefore, as a sequel to the orders allowing the first mentioned CRP, the CRP.Nos.5532 & 5542 of 2016 are allowed and the orders impugned in the said CRPs are set aside. Consequently, I.A.Nos.718 of 2015 and 318 of 2016 filed by the defendant with requests for receiving the

documents on file and for trying the issue related to the jurisdiction as a preliminary issue are dismissed.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

**M.SEETHARAMA MURTI, J**

10.10.2018
Note: Issue CC by 12.10.2018.
[B/o]
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