

* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

+ C.R.P.Nos.5472 & 5958 of 2017

% Date: 19-01-2018

C.R.P.Nos.5472 & 5958/ 2017

Between:

1. M/s Associated Automotives Sales Pvt. Ltd., rep. by its Authorised Signatory, P.D. Prasad, S/o. Varahala Rao, R/o.27-6-29, Prakasham Road, Vijayawada.
2. M/s. Associated Auto Service Pvt. Ltd., rep. by its Authorised Signatory, Syed Usman, S/o. Adam, R/o. 27-6-29, Prakasham Road, Vijayawada.

... Petitioners/defendants

Vs.

1. R.K. Mahesh (since died)
2. Smt. Kavitha M. Kubuchandani, W/o. Late R.K. Mahesh, R/o. 29-12-19/1, Venkataratnam Street, Suryaraopet, Vijayawada.
3. Kamal M. Kubuchandani, S/o. Late R.K. Mahesh, R/o. 29-12-19/1, Venkataratnam Street, Suryaraopet, Vijayawada.
4. Smt. Payal Vijay Sahani, W/o. Vijay Sahani, R/o. 29-12-19/1, Venkataratnam Street, Suryaraopet, Vijayawada.
5. Dinesh M. Kubuchandani, S/o. Late R.K. Mahesh, R/o. 29-12-19/1, Venkataratnam Street, Suryaraopet, Vijayawada.
6. G.S.H. Prasad, S/o. Krishnaiah, Vasantha Vihar Sastri Nagar, Opp. Madhukalyana Mandapam, Moghalrajapuram, Vijayawada.

.. Respondents/Plaintiffs.

! Counsel for the Petitioner : Mr. S. Satyanarayana Prasad
Ms. C. Sindhu Kumari

^ Counsel for Respondents: Mr. D. Anil Kumar

< GIST:

> HEAD NOTE:

? Cases referred

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

C.R.P.Nos.5472 & 5958 of 2017

ORDER:

The respondents in these two civil revision petitions are the legal heirs of one R.K. Mahesh. The said R.K. Mahesh filed a suit in O.S.No.1177 of 2006 on the file of the VII Additional Senior Civil Judge, Vijayawada against one G.S.H. Prasad, who is arrayed as the 6th respondent in these two revisions. The suit was for recovery of possession. The suit in O.S.No.1177 of 2006 filed by R.K. Mahesh against G.S.H. Prasad, arose under very peculiar circumstances.

2. It appears that the landlord R.K. Mahesh let out the plaint schedule property to one G.C.M. Banerjee for non-residential purposes long time ago. The landlord (R.K. Mahesh) initiated proceedings for eviction against the said G.C.M. Banerjee in O.S.No.143 of 1994. But the suit was dismissed on the ground that the quit notice issued under Section 106 was not a valid one and also on the ground that the tenant was a company by name Associated Automotive Sales Private Limited, represented by Sri G.C.M. Banerjee.

3. Thereafter, the landlord R.K. Mahesh issued a fresh quit notice as against two companies, viz., Associated Automotive Sales Private Limited and Associated Auto Service Private Limited, and then came up with a fresh suit in O.S.No.99 of 2003. In this suit, a joint memo of compromise was filed, based upon which a decree was passed to the following effect.

- i) that the suit be and the same is hereby dismissed recording joint memo.
- ii) that the lease period agreed is 10 years i.e., from 1st June 2006 to 31st May 2016.

- iii) That the agreed rent is Rs.10,000/- p.m. payable by the second party to the first party before 10th day of succeeding month and obtain a valid receipt day for.
- iv) That the 2nd party cannot contend at any point of time that rent is paid without receipt.
- v) That the 1st party shall pay the property tax and the 2nd party shall pay all the other taxes connected to their business.
- vi) That the 2nd party shall pay the electricity consumption charges separately apart from rent as per meter reading.
- vii) That the 2nd party agreed to enhance the rent from every 4 years on the rent @ 20% and the same is accepted by the 1st party.
- viii) That the 2nd party shall not submit the scheduled property to any third party.
- ix) That the 2nd party shall not make any external alteration to the schedule property without written consent of the 1st party.
- x) That during the subsistence of the tenancy if any damage is caused to the schedule property while it is in possession tenant, the tenant shall make good to the loss so as to restore the property to a good condition.
- xi) That after the completion of agreed period of lease, the lease can be extended upon the mutual agreement of both parties.
- xii) That any of the parties, both parties shall co-operate with each other and shall execute a regular lease deed on requisite stamp paper and get the same registered at the expenses of both parties.
- xiii) That the clause of this lease deed is consideration to the other clause.
- xiv) That G.S.H. Prasad, brother of G.C.M. Benarjee is the tenant of the 1st party from 01-06-2006 and is permitted to carry his or his associates business and he shall pay rents regularly and
- xv) That the both parties do bear their own costs of Rs. Nil.

4. However, within six months of the said suit O.S.No.99 of 2003 ending in a compromise decree on 28.06.2006, the landlord R.K. Mahesh came up with a fresh suit in O.S.No.1177 of 2006 for eviction and also for damages at the rate of Rs.20,000/- per month. It is out of the ancillary proceedings in this suit O.S.No.1177 of 2006 that both the civil revision petitions arise.

5. In the plaint in O.S.No.1177 of 2006 as it was originally filed by the landlord R.K. Mahesh, he impleaded only G.S.H. Prasad alone as the

sole defendant, taking advantage of clause-xiv of the compromise decree passed on 28.06.2006 in O.S.No.99 of 2003, whereunder G.S.H. Prasad was recognized as the tenant.

6. However, the defendants originally impleaded in O.S.No. 99 of 2003, namely, Associated Automotive Sales Private Limited and Associated Auto Service Private Limited, came up with an application in I.A.No.40 of 2015 seeking to implead themselves as defendants 2 and 3 in the suit O.S.No.1177 of 2006, on the ground that they are the actual tenants. But the said application for impleadment was dismissed by the trial Court by an order dated 11.09.2015. However, the said order was challenged by those two companies in C.R.P.No.4306 of 2015. The said revision was allowed by this Court by an order dated 13.11.2015.

7. As a result, the companies Associated Automotive Sales Private Limited and Associated Service Private Limited, were impleaded as defendants 2 and 3 in O.S.No.1177 of 2006.

8. After the impleadment of the two new defendants, the counsel for the plaintiff carried out amendments to the original plaint. But the amendments carried out by the counsel for the plaintiff, were not confined solely to the amendment of the long and short cause title. The counsel for the plaintiff also carried out certain amendments in the body of the plaint, on the impression that all of them were merely consequential to the order allowing the impleadment.

9. Challenging the amendments so carried out allegedly without following the proper procedure, the newly added defendants 2 and 3 filed two applications. One application was numbered as I.A.No.96 of 2017. The prayer in the said application was to initiate prosecution against the

persons responsible for tampering with the original plaint by making alterations. Another application filed in G.L.No.3048, was for striking off the corrections made by the plaintiffs in the original plaint. This application was returned with an endorsement asking the counsel for defendants 2 and 3 to explain how the application was maintainable.

10. By a separate order dated 29.08.2017, the application for prosecution in I.A.No.96 of 2017 was dismissed by the trial Court.

11. As against the order of the trial Court dated 29.08.2017 passed in I.A.No.96 of 2017 refusing to initiate prosecution, the defendants 2 and 3 have come up with C.R.P.No.5472 of 2017. Similarly, defendants 2 and 3 have come up with C.R.P.No.5958 of 2017, as against the endorsement made in the application for striking off the corrections made in the original plaint, questioning its maintainability.

12. Thus there are two revision petitions before me, both filed by the newly impleaded defendants 2 and 3 in a suit for eviction. While one revision arises out of the endorsement made by the trial court as to how the application for striking off the corrections carried out to the plaint are maintainable, the other revision arises out of the dismissal of an application seeking permission to prosecute those responsible for carrying out corrections in the plaint.

13. Heard Mr. S. Satyanarayana Prasad, learned Senior Counsel for the petitioners and Mr. D. Anil Kumar, learned counsel for the respondents/plaintiffs.

14. The crucial question that arises in these revisions is as to the extent of the consequential amendments that could have been carried out

by the plaintiff, pursuant to a simple order allowing an application for impleadment.

15. As I have pointed out earlier, I.A.No.40 of 2015 was filed by the petitioners in these two civil revision petitions, under Order I Rule 10(2) C.P.C. for impleading them as defendants 2 and 3 in the suit. Their contention in the application was that they are the tenants of the suit schedule property and that by taking advantage of Clause-xiv of the decree in O.S.No.99 of 2003, the plaintiff was not entitled to institute the suit only as against G.S.H. Prasad.

16. The application for impleadment was dismissed by the trial Court, but the civil revision petition filed against the said order was allowed by this Court.

17. What is to be done in cases where an application under Order I Rule 10(2) is allowed, impleading a new defendant, is answered by sub-rule (4) of Rule 10 of Order I C.P.C. It states as follows:

“Where defendant added, plaint to be amended:- Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.”

18. It is important to note that under Order I Rule 10(4), a plaint is liable to be amended “*in such manner as may be necessary*” unless the Court otherwise directs. Therefore, the extent to which consequential amendments are to be carried out pursuant to an order under Order I Rule 10(2), depends upon the extent of the necessity, unless the Court otherwise directs.

19. This is in contrast to what Order VI Rule 17 provides. Under Order VI Rule 17 – (1) it is the Court which orders amendment of the pleadings; and (2) such order itself may stipulate the manner in which and the terms subject to which the amendments may be made. The contingency to make an amendment under Order I Rule 10 (4) may arise – (1) either on account of an application taken out by either of the parties for impleadment of a third party; (2) or on account of an application for impleadment taken out by a third party to the suit to get impleaded; or (3) on account of the Court itself *suo motu* ordering impleadment of a party. But the contingency for amendment under Order VI Rule 17 would arise only on an application of one of the parties to the proceedings. This is why an obligation is cast under Order VI Rule 18, upon a party seeking amendment under Order VI Rule 17, to carry out the amendment.

20. Under Order I Rule 10(4) there is no provision, which is similar to Order VI Rule 18. Order I Rule 10(4) is also silent as to who should carry out the amendment and this in contrast to the clear prescription contained in Order VI Rule 17 as to who should carry out the amendment.

21. In simple terms, the distinction between Order I Rule 10(4) and Order VI Rule 17 could be summarized as follows:

- a. The necessity to invoke Order I Rule 10(4) may arise only in the case of addition of a defendant and not otherwise. But the necessity to invoke Order VI Rule 17 and 18 may arise on account of amendment of the pleadings and not merely the addition of a party to the proceeding.

- b. The necessity to invoke Order I Rule 10(4) may arise even on account of a *suo motu* action on the part of the Court, while Order VI Rule 17 does not admit of any *suo motu* power.
- c. There is no indication in Order I Rule 10(4) as to who should carry out the amendment. But under Order VI Rule 17, the obligation to carry out the amendment is upon the party who sought such amendments.
- d. Order I Rule 10(4) is silent about the consequences of the failure to carry out amendment. But Order VI Rule 18 speaks about the consequences of failure to make amendments.
- e. Under Order I Rule 10(4) there is a necessity to amend the plaint “*in such manner as may be necessary*”. But under Order VI Rule 17, the Court itself decides the manner in which and the terms subject to which the amendment has to be made.

22. Keeping the above legal aspects in mind, if we come back to the case on hand, it can be seen that the application taken out by the petitioners herein for their impleadment as defendants 2 and 3 in the suit, was allowed on a revision filed by them. This Court, which passed the order allowing the application for impleadment, did not prescribe the manner in which the amendment of the plaint had to be carried out as a matter of necessity, in terms of Order I Rule 10(4). Therefore, as a consequence, it was left to the officer in charge of the particular section in the trial Court, either to carry out the consequential amendments by himself or to allow the counsel for the plaintiffs to carry out the amendment.

23. It appears that the counsel for the plaintiffs carried out the consequential amendments by making insertions at the appropriate places. In other words, what the learned counsel for the plaintiffs did was to insert the word "1st", in between the words "the" and "defendant", wherever the words "the defendant" appeared in the plaint.

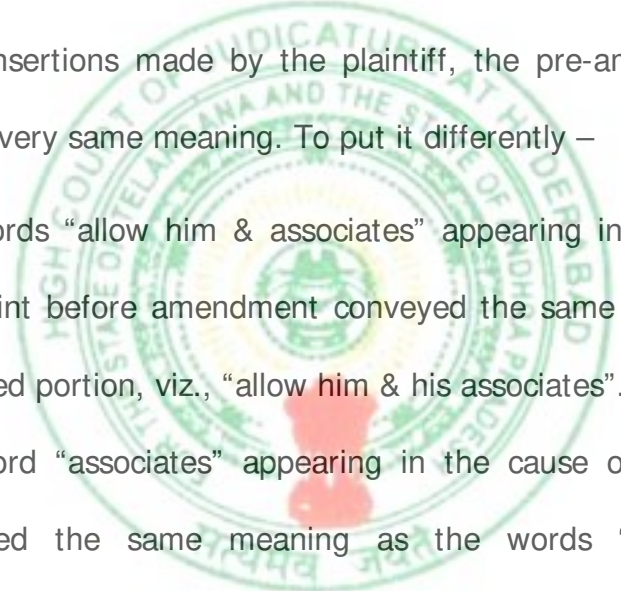
24. Apart from altering the words "the defendant" into "the 1st defendant", the counsel for the plaintiffs also carried out a few more corrections. They are as follows:

- a. In para-2 of the plaint, the plaintiff inserted the word "his", in between the words "him & associates".
- b. In the cause of action paragraph, the plaintiff inserted the words "i.e., defendants 2 & 3" in between the words "associates" and "by" in the second line.
- c. In column No.(i) of the portion containing the reliefs sought in the plaint, the plaintiff included the alphabet "s" to the word defendant, so that the word that was in singular became plural. The plaintiff also inserted "(D2 & D3)", in between the words "associates" and "to vacate" in column No.(i) of the prayer portion of the plaint.

25. Out of the amendments that the plaintiff has carried out and which I have extracted above, those amendments where the words "the defendant" were altered to read as "the 1st defendant" are merely consequential and were liable to be made as a matter of necessity. The petitioners herein could not have taken exception to the insertion of the word "1st" in between the words "the" and "defendant" wherever they appeared.

26. There are only three places in the plaint where the plaintiff made insertions that could possibly be objected to by the petitioners herein. The first place is in paragraph-2 of the plaint where the plaintiff inserted the word "his". The second place is in the cause of action paragraph where the plaintiff inserted the words "i.e., defendants 2 & 3". The third place is in the prayer portion of the plaint where the plaintiff inserted the words "(D2 & D3)" in column No.(i).

27. But a reading of paragraph-2 of the plaint, the cause of action paragraph and the prayer portion of the plaint would show that even without the insertions made by the plaintiff, the pre-amended portions conveyed the very same meaning. To put it differently –

- 
- a. The words "allow him & associates" appearing in paragraph-2 of the plaint before amendment conveyed the same meaning as the amended portion, viz., "allow him & his associates".
 - b. The word "associates" appearing in the cause of action portion conveyed the same meaning as the words "associates i.e., defendants 2 & 3".
 - c. Same is the case with column No.(i) of the prayer portion of the plaint.

28. Therefore, to describe what the plaintiff did to the plaint, as the tampering of the plaint, is to make a mountain out of a molehill.

29. When there is no clarity---

(1) as to who should carry out the amendment in cases arising under Order I Rule 10(4) C.P.C., especially when a third party gets impleaded at his own behest; and

(2) as to the manner in which the necessity to make consequential amendments can be assessed, as stipulated in Order I Rule 10(4), what the plaintiff did cannot be found fault with. The tests to be applied in all these cases are (a) whether there is clarity on the legal aspect; and (b) whether the party against whom fingers are pointed out, stood to gain any unfair advantage.

30. In the case before me, by making the insertions that I have pointed out, in paragraph-2, the cause of action paragraph and in the prayer portion of the plaint, the plaintiff did not seek to gain any unfair advantage. Therefore, the application filed by the petitioners herein in I.A.No.96 of 2017 for prosecuting those responsible for tampering the original plaint, was dismissed rightly by the trial Court and I see no reason to interfere with the said order. Hence, C.R.P.No.5472 of 2017 is dismissed and the order of the trial Court dated 29.08.2017 in I.A.No.96 of 2017 is confirmed.

31. Coming to the other civil revision C.R.P.No.5958 of 2017, the same arises out of the order of the trial Court making an endorsement in an interlocutory application filed by the petitioners/defendants 2 and 3 for striking off the corrections made by the plaintiffs in the original plaint. In the normal course, the petitioners should have explained, as to how the petition was maintainable and represented the interlocutory application. Thereafter, the application should have been numbered and heard and decided by the trial Court on its own merits.

32. The moment a query is raised on an application, as to how it is maintainable, it is not open to the party to rush to the high Court by way of a civil revision petition under Article 227. The endorsement under

challenge in C.R.P.No.5958 of 2017 is just a query as to how the application was maintainable. Whenever the Registry or the Examiner returns an application raising a query, it is the duty of the counsel to give a reply to the query and represent the same. If the Examiner is still not satisfied with the answer, he may be requested to post the matter before the Court for the arguments of the counsel. The counsel has to invite a judicial order on the question of maintainability and only thereafter, come up with a revision, if by a judicial order, the issue of maintainability was decided against him. But the petitioners have bypassed all these steps and come up with the above revision challenging the very first endorsement containing a query relating to the maintainability of the application. This practice cannot be encouraged.

33. Therefore, I am obliged, in the normal circumstances to dismiss the revision, with a direction to the petitioners to represent the application in G.L.No.3048 of 2017, invite a judicial order on the question of maintainability and come up thereafter.

34. But if we look at the history of this litigation, the above course of action is exactly what the petitioners want. The litigation between the landlord and the tenant in this case had started 23 years ago with the first civil suit in O.S.No.143 of 1994. After it was dismissed in the year 2002, a fresh suit came to be filed in the year 2003 and the said suit ended in a compromise. Normally disputes culminate in compromise, but in this case a dispute arose out of the compromise, leading to the institution of the suit O.S.No.1177 of 2006 out of which the present revisions arise.

35. The suit is of the year 2006. A period of 11 years has passed. The litigation is 23 years old. Therefore, I do not think that the dismissal

of the civil revision with a direction to the petitioners to represent the application and invite an order, will be a fair and proper solution.

36. As I have pointed out earlier, the prayer in the unnumbered interlocutory application in G.L.No.3048 of 2017 (out of which C.R.P.No.5958 of 2017 arises), is for striking off the corrections made by the plaintiffs in the original plaint, excepting those in the cause title. In other words, the contention of the petitioners is that while the corrections made in the long and short cause title cannot be objected to, the other corrections carried out in the body of the plaint should not be allowed to stand.

37. But the above contention is not wholly correct or justified. Order I Rule 10(4) admits of amendments in such manner as may be necessary. There was only one defendant in the suit. Therefore, the body of the plaint repeatedly referred only to "the defendant". Once the application filed by the petitioners to get impleaded was allowed, multiple defendants came into the picture. Therefore, the plaintiffs were right in inserting the word "1st" before the word "defendant" in the body of the plaint, wherever that word appeared. The only places where the insertions could have been objected to by the petitioners are in (1) paragraph-2; (2) the cause of action paragraph; and (3) the portion containing prayer (i). The insertions made in these three places, are actually not of any significance, since, even without these insertions, the body of the plaint and the prayer conveyed the very same meaning. Therefore, these insertions may not come within the purview of the word "necessary" appearing in Order I Rule 10(4).

38. Hence the civil revision C.R.P.No.5958 of 2017 is allowed directing the trial Court to strike off the following corrections made by the plaintiffs in the original plaint:

- a. Delete the word “his” appearing in the second line of paragraph-2 of the plaint;
- b. Delete the words “i.e., defendants 2 & 3” from the second line of the cause of action paragraph; and
- c. Delete the words “(D2 & D3)” from the first line of the portion containing relief (i).

39. Accordingly, C.R.P.No.5958 of 2017 is disposed of to the above effect with a further direction to the trial Court to dispose of the suit, which is of the year 2006, within a period of two months from the date of receipt of a copy of this order.

40. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

19th January, 2018
Js.

V. RAMASUBRAMANIAN, J

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

C.R.P.Nos.5472 & 5958 of 2017



19th January, 2018

Js.