

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.6949 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/defendant assailing the order, dated 17.11.2017, of the learned VIII Additional District Judge, Miryalguda, passed in IA.No.541 of 2017 in AS.No.92 of 2013 filed under Order VI Rule 17 of the Code of Civil Procedure, 1908, ('the Code', for brevity) requesting for permission to amend the written statement by adding the petition listed paragraph to explain/ clarify disputed admissions in the written statement.

2. I have heard the submissions of *Sri Gade Venkateswara Rao*, learned counsel for the revision petitioner-defendant, and of *Sri A.Abhishek Reddy*, learned counsel for the respondent-plaintiff. I have perused the material record.

3. The parties shall hereinafter be referred to as the plaintiff and the defendant for convenience and clarity.

4. At the outset, it is to be noted that the plaintiff brought the suit against the defendant seeking specific performance of an agreement of sale, dated 02.12.1999. Having filed a written statement, the defendant resisted the suit. After full-fledged trial, the said suit was decreed in favour of the plaintiff. Aggrieved by the judgment and decree of the trial Court, the defendant preferred a first appeal in A.S.no.92 of 2013 on the file of VIII Additional District Court, Miryalguda. During the pendency of the appeal, the defendant filed two applications, viz., (i) I.A.no.40 of 2015 requesting to send exhibit A1, the suit agreement of sale to an expert of the State Forensic Science Laboratory, Hyderabad, for furnishing an opinion as to whether the year '2000' in the 7th line from the bottom of the first page of the said agreement is altered as '2002'; and, (ii) the subject application (I.A.no.541 of 2017)

requesting for permission to amend the written statement by adding the petition listed paragraph to explain/clarify disputed admissions in the written statement. On merits, the Court below dismissed both the applications. Hence, this revision and the other revision in C.R.P.no.801 of 2018 are filed by the defendant.

5. Before proceeding further, it is necessary to refer to the pleadings of the parties.

5.1 The case of the defendant in support of the afore-stated request, in brief, is as follows:

The plaintiff brought the suit for specific performance of an agreement of sale. Though it was averred in the plaint that a legal notice was issued to the defendant prior to the filing of the suit, any such notice is not served upon the defendant since the defendant had shifted his residence from Damaracherla village and Mandal of Nalgonda District to Piduguralla of Guntur District. Later, the defendant came to know that the said legal notice was sent through one M.Yadagiri Swamy, Advocate of Miryalguda. The said fact is not known to the defendant. His advocate filed written statement on his behalf. After trial, the suit was decreed. The said learned counsel at the instance of the husband of the plaintiff took away the case bundle from the defendant without informing the same to him. Without the knowledge and consent of the defendant, the counsel added in the written statement a sentence as follows: “..and it is true as per the conditions of the agreement, the plaintiff has to pay balance consideration of Rs.75,000/- and get to be registered the suit property on or before Feb. 2002” [reproduced verbatim]. The counsel did not obtain the initials or signature at the time of adding the above sentence. This defendant’s former counsel endorsed ‘no objection’. This defendant has been residing at Piduguralla for the last 16 years and hence, he does not know about the case proceedings. Hence, he could not file a similar petition before the

trial Court. At the time of preparing for arguments and after going through the entire file, he came to know that the year '2000' mentioned in the recital of the agreement was changed as '2002' to save limitation. He was advised that he has to clarify/ explain the alleged disputed admission. Hence, he may be permitted to amend the written statement.

5.2 Per contra, the case of the plaintiff, in brief, is this:

As per the amended Code an amendment of the pleadings after commencement of trial is not permissible. A party who is seeking the amendment has to establish that inspite of due diligence he could not raise the matter before commencement of the trial. The defendant has not satisfied the said requirement. The petition filed at a belated stage that too when the matter is before the first appellate Court is devoid of merit and is liable to be dismissed.'

6. At the hearing, learned counsel for the defendant while reiterating the pleaded case of the defendant further submitted as follows: 'The photostat copy of the sale agreement supplied to the defendant at the time of its execution clearly discloses the words 'February 2000'. The Court below ought to have seen that the defendant is suspecting his counsel as the counsel added a sentence at the end of paragraph 4 of the written statement in his handwriting without the knowledge and consent of this defendant only to support the case of the plaintiff. He came to know about the mischief of his said counsel after disposal of the suit. As such, he could not file the instant petition during the pendency of the suit before the trial Court. Further, at the time of preparing for arguments in the case and after going through the entire file, the counsel came to know recently that the year '2000' was changed as '2002' to save limitation. Hence, the subject petition is filed during the pendency of the appeal. The Court below ought to have allowed the petition as the contention of the defendant is that his former counsel played mischief

behind the back of the defendant and played fraud upon him and that he came to know about the same after the suit was decreed. The order of the Court below dismissing the petition is unsustainable and is unjustified. The amendment is necessary to bring the correct facts to the notice of the Court. The impugned order is unsustainable under the facts and in law.'

7. On the other hand, learned counsel for the plaintiff while supporting the order of the Court below *inter alia* contended as follows: 'The Court below is justified in dismissing the application of the defendant. The amendment of a plaint or a written statement cannot be permitted after the issues are settled and after the commencement of the trial, in view of the *proviso* appended to Order VI Rule 17 of the Code. Such a request, which is not *bona fide* and which is highly belated, cannot be entertained and permitted. The suit was decreed after full-fledged trial. During the course of trial, the defendant did not dispute the *bona fides* and the authority of the counsel who filed the written statement and conducted the case on his behalf. After the suit was decreed, to get over the admissions, the defendant is making false allegations against his former counsel with *mala fide* intentions and to somehow delay and defeat the just claim of the plaintiff. The defendant admitted the true facts in his deposition before the trial Court. The present petition under the facts and the circumstances of the case is not maintainable and is liable to be dismissed.'

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

9. At the outset it is to be noted that the defendant filed the subject petition with a request to permit to amend his written statement and add the following paragraph in the written statement.

" The erstwhile counsel of defendant Sri Yadagiri Swami, Advocate, Dameracherla village could not obtain the signatures on first and second page of the WS. Prior to filing of above case, his erstwhile counsel Sri M.Yadagiri Swamy, Advocate, Dameracherla village got issued legal notice dated

11-12-2004 to him to his Dameracherla address village and Mandal Address, i.e., "P.Satyanarayana C/o Amar Jewelers, Janpahad Road, R/o & M/o Dameracherla' on behalf plaintiff, four years prior to it the defendant shifted his entire family to Piduguralla Municipality of Guntur District by taking a rice mill on lease to run the same for eking out his livelihood. Therefore the said legal notice was not served upon him, so it was returned to Sri Yadagiri Swami, Advocate, Dameracherla village. By suppressing the said factum, the said Sri M.Yadagiri Swamy, Advocate, Damarcherla took the case of the defendant. In fact in lower Court the above case was filed by Sri G.Kiran Kumar, Advocate, Miryalguda who is close associate and caste man of Sri Yadagiri Swamy, Advocate, Miryalguda. In fact, his erstwhile counsel had no right to add the sentence of "and it is true as per the conditions of the agreement, the plaintiff has to pay balance consideration of Rs.75,000/- and get to be registered the suit property on or before Feb, 2002" in para no.4 of earlier WS without the consent, knowledge and notice of defendant. It appears that the earlier counsel of defendant could not act in his favour, as such he filed a petition against his earlier counsel in Bar Council of AP, Hyderabad vide SR no.97/ 2003 on 18-7-2013 to take action against him with all proofs which is pending enquiry. The said suit was decreed at first without giving opportunity to the defendant to enter into the witness box. Basing on it the plaintiff filed EP and got sent the EP notice to the Damercherla address of defendant. The tenant of defendant at Damercherla informed the same orally about sending of EP notice to the defendant. After that the defendant got engaged Sri G.Venkateshwarlu, Advocate, Miryalguda after going through the case file his new counsel informed all those things to the defendant.

It is submitted that prior to accepting the case of defendant, his earlier counsel Sri Yadagiri Swamy, Advocate, Miryalguda issued legal notice to the defendant on behalf of plaintiff on 12.12.2014. As the defendant was residing at Pidugurall village and Mandal of Guntur District, the said legal notice which was sent to his Damaracherla address was returned back to the said Sri Yadagiri Swamy, Advocate, again

Sri Yadagiri Swamy, Advocate contacted the defendant and took his case on his behalf by suppressing the above real facts. There is a clear collusion in between Yadagiri Swamy, Advocate and the husband of plaintiff. As such in WS at page no.3, after completion of para 4, the earlier counsel of defendant wrote the following sentence in the absence of defendant without instructions, without notice, and without his knowledge and consent.

“It is true as per the condition of the agreement, the plaintiff has to pay balance consideration of Rs.75,000/- and get to be registered the suit property on or before dated Feb, 2002.” Basing on it the trial court decreed the suit by directing the respondent to pay my balance consideration with interest within two months.

Therefore that the Hon'ble Court has got ample powers to permit me to explain/ clarify the alleged disputed admission taken place in my WS, otherwise I will be put to irreparable loss and much inconvenience. If I am permitted to do so, there will be no prejudice to other side.”

(Reproduced verbatim)

10. Now the only short question is - Whether the application of the defendant filed during the pendency of the first appeal requesting for permission to amend the written statement and incorporate the above paragraph to clarify and explain the disputed admissions in the written statement can be permitted in the facts & circumstances of the case?

11. Admittedly, the suit is filed for specific performance of an agreement of sale. The defendant having filed a written statement resisted the suit. The suit was decreed after full-fledged trial. No doubt, a perusal of the written statement reflects that a sentence was added at the end of paragraph (4) of the written statement in the handwriting obviously of the counsel as follows:

‘... and it is true as per the conditions of the agreement, the plaintiff has to pay the balance consideration of Rs.75,000/- and get to be registered the said

property on or before dated Feb.2002' [reproduced verbatim]. It is undisputed that the counsel put his initials at the beginning and the end of the above said sentence which was added in the written statement in handwriting. However, during the course of the trial, the defendant did not raise the said issue by stating that the year '2000' in one of the recitals of exhibit A1 agreement was altered as '2002' by the plaintiff to get over the bar of limitation. PW1 was not cross-examined on the said aspect. DW1 also did not depose about the said alleged alteration of the year in exhibit A1, agreement of sale. After full-fledged trial, the suit was decreed in favour of the plaintiff. The defendant having filed the first appeal now contends that the above sentence was added in handwriting in the written statement by the counsel without his consent and knowledge and by playing mischief behind his back and that the counsel played fraud upon him, and hence, he may be permitted to amend the written statement and clarify the above sentence containing the above admission. The defendant also submits that since he has been residing at Piduguralla for the last 16 years he does not know about the case proceedings and hence, he could not file a petition before the trial Court and that at the time of preparing for arguments and after going through the entire file, he came to know that the year '2000' mentioned in the recital of the agreement was changed by the plaintiff as '2002' to save limitation and that on advise, the subject application for amendment of the written statement is filed. However, a perusal of the affidavit filed before the trial Court by him in lieu of his examination-in-chief would show that he stated in the said sworn affidavit as follows: 'That as per the conditions of the agreement, the plaintiff has to pay the balance of consideration of Rs.75,000/- and get registration of the said property by the end of February, 2002. Time is the essence of the contract.' This assertion in the sworn affidavit filed in lieu of his examination-in-chief would show that the defendant admitted the year as '2002' and further stated that time is the essence of the contract. The defendant is not disputing this statement in his

said sworn statement. However, he is now seeking amendment of the written statement contrary to his own deposition. In the considered view of this Court, the defendant cannot get over this admission made on oath in his deposition in the form of an affidavit filed in lieu of his examination-in-chief. If the defendant's specific case is that the year is '2000', he ought not to have made the above statement in his sworn affidavit filed in lieu of his examination in chief. But he did not do so. On the other hand he asserted the pleading the written statement in his examination in chief. In view of his above statement made by the defendant before the trial Court made in March, 2013 during the course of the trial belies all his contentions now being made in support of the present request. No reasons or explanation is forthcoming for not filing this petition before the trial Court. In that view of the matter, it is clear that the reasons stated for seeking the instant relief are obviously false and contrary to the record. Therefore, the contention of the defendant that he is not aware of the adding of the above said sentence in the written statement when the suit is pending adjudication before the trial Court and that he came to know about the same during the pendency of the first appeal deserve no countenance. The present request contrary to the admission in the deposition of the defendant cannot be entertained when the defendant is not disputing the said statement made in his sworn affidavit filed before the trial Court in lieu of examination in chief. By merely seeking amendment of the written statement no purpose would be served as the amendment even if permitted does not wipe out the statements in the deposition of the defendant, that is, in the affidavit filed in lieu of examination in chief.

12. Having regard to the above facts and circumstances and on the above analysis, this Court finds that the Court below is justified in holding that the petition filed for permission to seek amendment of the written statement lacks merit and is liable to be dismissed. As a sequel, this Court holds that the

impugned order of the Court below is sustainable both under facts and in law and that it does not brook any interference.

13. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision, shall stand closed.

11.04.2018
RAR

M. SEETHARAMA MURTI, J

