

**THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

CIVIL REVISION PETITION No.6553 OF 2017

ORDER:

This civil revision petition is filed by the petitioner, under Article 227 of the Constitution of India, assailing the order dated 28.8.2017 in I.A. No.1641 of 2016 in O.S. No.448 of 2018 on the file of the Court of Principal Junior Civil Judge, Ongole, wherein and whereby the petition filed under Order VI Rule 17 of CPC was dismissed.

2. The petitioner filed O.S. No.448 of 2012 against the respondents seeking perpetual injunction and mandatory injunction in respect of the suit schedule property. At the stage of arguments, the petitioner filed the interlocutory application under Order VI Rule 17 of CPC for amendment of the plaint to include the relief of declaration. The respondents filed counter opposing the claim of the petitioner on various grounds. The trial Court, after affording reasonable opportunity to both the parties, dismissed the petition. Hence, the revision.

3. Heard the learned counsel for both the parties.

4. The point that arises for consideration is:

*Whether there is any illegality, irregularity or impropriety in the order under revision?*

5. It is not in dispute that the petitioner filed the suit for perpetual injunction and mandatory injunction in the year 2012. The respondents filed the written statement in the year 2012 itself by taking specific stand that the suit for injunction simpliciter without seeking the relief of declaration is not maintainable.

Knowing fully well the stand taken by the respondents, the petitioner commenced the trial of the suit. The evidence on both sides was closed on 01.9.2016. The petitioner has taken two adjournments for submission of arguments. At that stage, the present petition is filed. The trial Court dismissed the petition on the ground that the petitioner failed to show due diligence on his part.

6. In order to appreciate the rival contentions, this Court is placing reliance on the following decisions:

(i) **Chander Kanta Bansal v Rajinder Singh Anand**<sup>1</sup> wherein the Hon'ble apex court held at Paragraph Nos.15 and 16 as follows:

15. As discussed above, though first part of Rule 17 makes it clear that amendment of pleadings is permitted at any stage of the proceeding, the proviso imposes certain restrictions. It makes it clear that after the commencement of trial, no application for amendment shall be allowed. However, if it is established that in spite of "due diligence" the party could not have raised the matter before the commencement of trial depending on the circumstances, the court is free to order such application.

16. The words "due diligence" have not been defined in the Code. According to *Oxford Dictionary* (Edn. 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per *Black's Law Dictionary* (18th Edn.), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by a person who seeks to satisfy a legal requirement or to discharge an obligation. According to *Words and Phrases* by Drain-Dyspnea (Permanent Edn. 13-A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs.

(ii) **J.Samuel v Gattu Mahesh**<sup>2</sup> wherein the Hon'ble apex court held at Paragraph Nos.16 and 19 as follows:

16. As stated earlier, in the present case, the amendment application itself was filed only on 24-9-2010 after the

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<sup>1</sup> (2008) 5 SCC 117

<sup>2</sup> (2012) 2 SCC 300

arguments were completed and the matter was posted for judgment on 4-10-2010. On proper interpretation of the proviso to Rule 17 of Order 6, the party has to satisfy the court that it could not have discovered that ground which was pleaded by amendment, in spite of due diligence. No doubt, Rule 17 confers power on the court to amend the pleadings at any stage of the proceedings. However, the proviso restricts that power once the trial has commenced. Unless the court satisfies (*sic* itself) that there is a reasonable cause for allowing the amendment, normally the court has to reject such a request.

19. Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term “due diligence” is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial.

As per the principle enunciated in the cases cited supra, the Court has to consider whether the petitioner has satisfied the basic ingredients of the proviso to Order VI Rule 17 of CPC.

7. In order to appreciate the rival contentions, I have carefully perused the affidavit filed by the petitioner. A perusal of the same reveals that at the advice of the Advocate, the petitioner filed the present interlocutory application for amendment of the plaint, at the fag end of the suit. Establishment of the ingredients of the Proviso to Order VI Rule 17 of CPC is *sine qua non* to allow the petition. There is no mention in the affidavit that despite his best efforts, the petitioner could not file the amendment petition at the earliest point of time. As observed earlier, the petitioner was very much aware of the stand taken by the respondents in the year 2012 itself. The entire controversy in the suit is as to the width of the suit passage – whether it is six (6) feet as claimed by the petitioner or nine (9) feet as contended by the respondents. The width of the suit passage can be decided basing on the material

available on record, without amending the plaint. Taking of such a plea in order to protract the matter as long as possible cannot be ruled out completely.

8. Another interesting aspect is that the petitioner has taken a specific plea in the affidavit that the Court can, without referring the title deeds, decide the relief of declaration. This Court is unable to accede to the said contention. The trial Court considered the facts of the case on hand in the light of the Proviso to Order VI Rule 17 of CPC. The petitioner has not satisfied the ingredients of Proviso to Order VI Rule 17 of CPC. The trial Court has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing the findings recorded by the trial Court. There is no illegality, irregularity or impropriety in the order under challenge to warrant interference by this Court.

9. In the result, the civil revision petition is dismissed. Miscellaneous petitions if any pending in this revision petition shall stand closed.

**T.SUNIL CHOWDARY, J.**

Date: 06.7.2018  
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