

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CIVIL REVISION PETITION No.7062 OF 2017

ORDER :

This Civil Revision Petition is filed against order dated 24.11.2017 in I.A.No.1106 of 2016 in O.S.No.14 of 2014, wherein and whereby the application filed by the 1st respondent/plaintiff under Order VI Rule 17 of CPC r/w Section 151 CPC for amending the plaint was allowed.

Brief facts which are necessary for disposal of this Revision Petition are that the 1st respondent/plaintiff filed suit for mandatory injunction directing the petitioner for removal of obstructions caused by him to V-1, V-2 and V-3 marked ventilators of the plaint plan No.1 of the plaint schedule property and also for removal of obstructions caused by the petitioner herein to the W-1 and W-2 windows of the plaint plan No.2 of the plaint schedule property and for mandatory injunction for removal of constructions made by the 1st respondent in his site by violating the express condition of the approved plan dated 05.03.2013 issued by the 2nd respondent municipality. In the present application, i.e., I.A.No.1106 of 2016, the 1st respondent sought for amending plaint pleadings in respect of easementary rights.

Learned counsel for the petitioner submits that the trial has commenced in the suit before the Court below and in view of the Code of Civil Procedure (Amendment) Act, 2002, Order VI rule 17, no amendment of plaint can be allowed after trial commenced.

He would contend that the Court below failed to appreciate the facts and allowed the application without valid and sufficient reasons. He submits that in any case, no plausible reason is shown for allowing the application, after commencement of trial in the suit. He submits that there are no bonafides in seeking amendment of the plaintiff.

Though notice is ordered and served and there is no representation on behalf of the 1st respondent/plaintiff.

In this case, it is to be seen that by allowing the application for amendment of plaint, cause of action does not change or the nature of suit changes. As rightly contended by the learned counsel for the petitioner no plausible reasons are forthcoming, but in paragraph 2 of the affidavit filed in support of the application, it is stated that due to inadvertence, the facts regarding easement of light and air were not mentioned in his plaint. Though the affidavit filed by the 1st respondent/plaintiff in support of the application is not properly drafted, he stated the reason for not mentioning the said facts in the plaint. The Court below exercised its discretion and allowed the amendment, though there is delay in filing the application. The Court below should have awarded costs for compensating the petitioner/defendant, but no such costs were awarded.

In view of above facts and circumstances, I do not see any infirmity in the order passed by the Court below. However, while affirming the order passed by the Court below, the same is modified by imposing costs of Rs.25,000/- on the 1st respondent/plaintiff, to be paid to revision petitioner/1st

defendant. The 1st respondent/plaintiff is directed to pay the said costs within a period of six weeks from the date of receipt of a copy of this order. The Court below shall proceed with the matter only after costs are paid to the petitioner and that if no costs are paid within the stipulated period, the Court below shall not give effect to the amendment of plaint. However, it is open for the petitioner herein to file additional written statement.

With the above direction, the Civil Revision Petition is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

09-03-2018
kvs



A.RAJASHEKER REDDY, J

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