A.No.6072 of 2018
in CS.No.477 of 2017

N.SATHISH KUMAR, J.

Heard, Mr.M.S.Krishnan, learned Senior Counsel appearing for the applicant/plaintiff and Mr.S.Raveekumar, learned counsel for the defendant /respondent.

2. This application has been filed for amendment of the plaint. The main contention of the plaintiff is that he received a demand notice through Deputy Commissioner (CT)-IV(LTU) dated 11.09.2018 for payment of a sum of Rs.1,35,28,116/-. The plaintiff has remitted the interest amount for the principle amount and obtained a receipt dated 13.04.2018. Therefore, the defendant is bound to pay a total sum of Rs.2,88,38, 631/- being the differential tax interest. Therefore, an amendment is sought for.

3. The learned counsel for the respondent/defendant would mainly submit that as per as per Section 32, Sub-Clause 41of the Central Sales Tax and Tamil Nadu Value Added Tax, when assessment is completed, the tax amount has to be paid within 30 days and failure to pay the amount within 30 days, interest is automatic and liable to be paid. Hence, it is the

contention of the learned counsel that on the date of filing of the suit, there is no cause of action. Hence, the plaintiff has now sought for permission of this Court to seek for the relief in this regard. It is also the contention of the respondent/defendant's counsel that amendment cannot be permitted and the relief sought for cannot be included, which is hit by Order 2, Rule 2 CPC.

4. The learned Senior counsel appearing for the applicant / plaintiff would submit that the object of Order 2 Rule 2 is to prevent subsequent suit on the same cause of action and not to scuttle the right for amendment and hence, his contention is that he sought for amendment only after the demand was made by the authorities. Therefore, only when the payment is made and interest has been paid, cause of action to claim differential tax interest arose for the plaintiff which would not cause much prejudice to the defendant. Accordingly, the plaintiff prayed to permit to amend the plaint.

5. The learned counsel for the respondent/defendant would contend that Order 2 Rule 2 CPC will not be applicable as the payment of interest is automatic and therefore, the relief sought to be amended is barred by limitation.

6. I have perused the entire pleadings. The suit has been originally filed for recovery of a sum of Rs.1,35,28,116/- from the defendant since, they allegedly failed to furnish the "C" Form and during the pendency of the suit, this application has been filed seeking amendment to claim additional sum said to have been paid towards interest by the plaintiff, the sum sought to be recovered from the defendant. Since there is no dispute with regard to the assessment and payment of interest, I am of the view that the amendment would not prejudice the defendant and the issue whether any cause of action arose or not and whether the amendment sought to be included in the plaint, is barred under law can be agitated at the time of trial itself but not at this stage. The grounds raised in this application can very well be raised by the defendant in the trial. The defendant is at liberty to raise objection by filing additional written statement.

7. In the light of the above, the application is ordered. The Registry is directed to carry out necessary amendment in the plaint.

05.11.2019

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