THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.1858 of 2018

ORDER :

This Civil Revision Petition is filed under Section 115 of Civil Procedure Code, 1908 challenging the order dt.15.02.2018 passed in E.A.No.1 of 2018 in E.A.No.6 of 2008 in E.P.No.4 of 2008 in O.S.No.311 of 1999.

2. The respondent nos.1 to 5 have filed O.S.No.311 of 1999 before the XXI Additional Chief Judge-cum-VII Additional Metropolitan Sessions Judge, Nampally, Hyderabad for recovery of possession against the 6th respondent, and the said suit came to be decreed on 06.12.2007.

3. The respondent nos.1 to 5 then filed E.P.No.4 of 2008 for execution of the said decree.

4. The petitioner herein filed a claim petition under Order XXI Rule 97 to 101 r/w Section 151 of Civil Procedure Code, 1908, being E.A.No.6 of 2008 in the said E.P., contending that the decree obtained by respondent nos.1 to 5 against the 6th respondent is not binding on him, and claiming that he purchased the suit schedule property under a sale deed dt.24.01.1990, executed by the 6th respondent.

5. During pendency of the claim petition, E.A.No.6 of 2008, the 6th respondent / Judgment Debtor died.

6. On the ground that petitioner did not take steps to bring on record the legal representatives of 6th respondent and his counsel was continuously absent, the Court abated the proceedings against the 6th respondent, and ultimately dismissed the claim petition on 26.09.2016 stating that even after 2 ½ years, legal representatives of the 6th respondent were not brought on record.

7. Subsequently, the petitioner filed E.A.No.1 of 2017 for restoration of the claim petition and the said E.A. was allowed on 20.11.2016. Thereafter, petitioner filed application to implead the legal representatives of deceased-6th respondent / Judgment Debtor, and the said application was also allowed. But consequential amendment was not carried out by petitioner. On that pretext, the Court dismissed the claim petition on 05.01.2018.

8. The petitioner then filed E.A.No.1 of 2018 to restore E.A.No.6 of 2008 by setting aside the order dt.05.01.2018. In the said application he stated that the cause-title amendment could not be carried out because the Junior Advocate of the counsel engaged by the petitioner did not understand what he was supposed to do, and so the petitioner engaged a different counsel and is ready to carry out the amendment.

9. Counter-affidavit was filed by respondent nos.1 to 5 opposing the same, contending that the amendment to cause-title by showing the legal representatives of the deceased-6th respondent ought to have

been carried out within the (15) days stipulated period for carrying out amendment. Though Order VI Rule 18 was not specifically mentioned, reference seems to have been placed on the said provision of law.

10. By order dt.15.02.2018, the Court below dismissed the said application stating that reason assigned by the petitioner are not convincing and the record indicated that the petitioner did not carry out the amendment within the time stipulated in spite of granting sufficient opportunities.

11. Challenging the same, the present Civil Revision Petition is filed.

12. On 21.03.2018, this Court granted stay of proceedings of the E.P.No.4 of 2008.

13. Now, the respondent nos.1 to 5 have entered appearance and seek to vacate the stay.

14. The counsel for petitioner contended that the claim petition is a substantive proceeding under Order XXI Rule 97 to 101 r/w Section 151 of Civil Procedure Code, 1908; that the Court below having allowed the L.R. petition and permitted the legal representatives of the deceased-Judgment Debtor / 6th respondent to be brought on record, cannot dismiss the claim petition on the ground that the cause-title is not amended within the time stipulated by it; and that it was the duty of the Court itself to cause such amendment without insisting that the

petitioner alone shall do it. He also contended that the provisions of Order IX Rule 4 of Civil Procedure Code, 1908 were rightly quoted and the said provision of law would apply. He further contended that Order VI Rule 17 of Civil Procedure Code, 1908 has no application. He cited the following decisions, viz., **Muddada Appa Rao (died) and another v. M. Nagendra Prasada Rao and others**[1], **Raviraj Singh vs. Ranvijay Pratap Singh and another**[2], **Govindaraj vs. B.S. Raja-Shekhar and another**[3], **Bhoganadham Seshaiah vs. Budhi Veerabhadrayya (died) and others**[4], **Kariyappa and others vs. Patel Rudrappa and others**[5], and **H.H. Darbar Alabhai Vajsurbhai and others**[6].

15. The counsel for respondents, however, refuted the said contentions and insisted that Order VI Rule 17 of Code of Civil Procedure, 1908 would apply; and once the application for amendment filed under Order VI Rule 17 of Civil Procedure Code, 1908 is allowed, and, if the amended copy of the plaint is not filed within the time stipulated in Order VI Rule 18 of Civil Procedure Code, 1908, the claim petition deserves to be dismissed; and was rightly dismissed. He relied upon the decisions in **Union of India vs. Pramod Gupta (Dead) by LRS. and others**[7], **Bheemreddy Yella**

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[1] 2016 (5) A.L.D. 14
[2] 2017 LawSuit (M.P.) 957
[3] AIR 2003 Karnataka 287
[4] AIR 1972 Andhra Pradesh 134
[5] AIR 1976 Karnataka 29
[6] A.I.R. 1937 Bombay 401
[7] (2005) 12 S.C.C. 1

Reddy vs. Bheemreddy Narasimha Reddy and others[8]**, Bachhraj Factories Pvt. Ltd. vs. Paramsukhdas and others**[9], **B. Channabyre Gowda and others vs. State of Mysore**[10], and **Southern Ancillaries Pvt. Ltd. vs. Southern Alloy Foundaries Pvt. Ltd.**[11].

16. I have noted the contentions of both sides.

17. Admittedly, the suit had been decreed in favour of respondent nos.1 to 5 against the deceased-6th respondent. After the decree, during execution proceedings, the 6th respondent died. Therefore, there cannot be any abatement of the execution petition or the claim petition filed by the petitioner on account of death of the 6th respondent since the principle of abatement does not apply to execution proceedings.

18. Though there was some delay in bringing on record the legal representatives of the 6th respondent on the part of petitioner in the claim petition E.A.No.6 of 2008, after its restoration on 20.11.2017, all that remained was to carry out the amendment in the cause-title by showing the legal representatives of the 6th respondent in it.

19. In **Pramod Gupta** (7 supra), a Division Bench of the Bombay High Court held that it was no part of the appellants' duty to take necessary steps to carry out court's order for substitution of the names of the heirs of the deceased-respondent in order to correct the record

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[8] 2016 (1) A.L.D. 80
[9] AIR 1993 Bombay 175
[10] AIR 1974 Karnataka 136
[11] AIR 2003 Madras 416

of the Court in terms of its order, and that it was a ministerial function which the Court's establishment was charged to perform. It observed that if it was not performed or neglected, the fault would not lie with the appellants.

20. This principle was reiterated in **Patel Rudrappa** (5 supra) by the Karnataka High Court and in **M. Nagendra Prasada Rao** (1 supra) by this Court.

21. This Court went further in **M. Nagendra Prasada Rao** (1 supra) and observed that when an order is made under Order XXII Rule 3 or 4 of Civil Procedure Code, 1908 bringing on record the legal representatives of the deceased-party, the said order has to be given effect to by recording the names in the cause-title of the pleadings; and this can be done either by the party who obtained the order, or by the Office of the Court; and that such change in the cause-title to be made cannot be considered as an amendment of the plaint within the meaning of Order VI Rule 17 of the Code, since the substitution of legal representatives of a deceased party is made to give effect to the order under Order XXII or Rule 3 or 4 of the Code. It further stated that Order VI Rule 18 of the Code will not apply in this situation, and the time limit prescribed therein for carrying out the consequential amendment, would also have no application. It held that the rules of procedure under Order XXII of the Civil Procedure Code are designed to advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties.

22. In contrast, the counsel for respondents had cited **B. Channabyre Gowda** (10 supra), wherein a single Judge of the Bombay High Court, disagreed with the view expressed by the Division Bench of the Bombay High court in **Pramod Gupta** (7 supra) and held that amendment to cause-title, after bringing on record the legal representatives of a party within the prescribed time limit under Order VI Rule 18 is mandatory, and Order VI Rule 18 would apply.

23. In my opinion, the learned single Judge in **B. Channabyre Gowda** (10 supra) is bound by the Division Bench judgment in **Pramod Gupta** (7 supra), and could not have taken a different view.

24. Therefore, I do not wish to follow the said judgment.

25. In **B. Channabyre Gowda** (10 supra) and **Southern Ancillaries Pvt. Ltd.** (11 supra), the amendment was to the plaint by way of a change in the plaint and not to the cause-title consequent to an application for bringing on record the legal representatives of a deceased party being allowed.

26. Therefore, the decisions in **B. Channabyre Gowda** (10 supra) and **Southern Ancillaries Pvt. Ltd.** (11 supra), also have no application to the facts of the present case.

27. Likewise, the decision in **Bheemreddy Yella Reddy** (8 supra), also relates to a regular amendment to a plaint, and not to a case where legal representatives of a deceased party had been brought on

record under Order XXII Rule 3 or 4. Therefore, the principle laid down therein that Order VI Rule 18 does not permit grant of time more than what is prescribed in the said provision for carrying out amendment, also would not apply.

28. In **Pramod Gupta** (7 supra), the Supreme Court has held that the provisions of Order VI Rule 18 are mandatory, and if not complied with the consequences flowing therefrom would ensue. But, as pointed out by me, in the instant case, Order VI Rule 17 has no application because the amendment was not to a pleading, but the amendment was consequential to a legal representative being brought on record invoking Order XXII.

29. Therefore, I am of the opinion that the Court below committed grave error in presuming that the time limit under Order VI Rule 18 is mandatory and the said provision of law would apply in the instant case, and on failure of the petitioner to make consequential amendment to the cause-title after legal representatives of the deceased-6th respondent are brought on record, the claim petition deserves to be dismissed.

30. As rightly pointed out in **M. Nagendra Prasada Rao** (1 supra) and in other decisions mentioned above, it is the duty of either the party or the office of the Court to change the cause-title after the legal representatives were brought on record; and if the party has not done so, it is the duty of the Court to do it, and it cannot

penalize the party for not correcting the cause-title by filing an amended claim petition.

31. A claim petition is a substantive proceeding and on such silly technical grounds a party cannot be thrown out and denied an opportunity to contest the execution proceeding.

32. Therefore, the Civil Revision Petition is allowed. The order dt.15.02.2018 passed in E.A.No.1 of 2018 in E.A.No.6 of 2008 in E.P.No.4 of 2008 in O.S.No.311 of 1999 is allowed. E.A.No.6 of 2008 is restored to the file of the Court below. Since the petitioner has stated that petitioner has already filed amended copy of the claim petition, the same shall be taken on record and the proceedings shall be concluded as expeditiously as possible, preferably within a period of four (04) months from the date of receipt of copy of the order.

33. No order as to costs.

34. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01.03.2019
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