

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.2761 of 2016

ORDER:

This Revision is filed assailing the order dt.19.04.2016 in I.A.No.766 of 2015 in O.S.No.3 of 2009 of the Principal District Court at Nalgonda.

2. Petitioner herein is the 2nd defendant in the above suit. The said suit was filed for recovery of money on the basis of a Promissory Note dt.27.09.2007 and it was mentioned by the 1st respondent in the plaint that the suit promissory note was executed on 27.09.2007.

3. However, it appears that the Promissory Note in question was actually dt.26.09.2007 and the number "27" was mentioned by mistake in the plaint in paragraphs 1, 5, 7 and 9, and in para 6 as 01.09.2006.

4. Written Statement was filed by the petitioner pointing out those defects on 23.04.2010.

5. When chief examination affidavit was filed by the 1st respondent/plaintiff, he mentioned about the typographical mistakes and then filed the I.A.No.766 of 2015 to substitute the date of the Promissory Note as 26.09.2007 in paragraphs 1, 5, 7 and 9 of the plaint pointing out that it was a typographical mistake, that he had given explanation with regard to the

mistakes in his evidence and the application seeking amendment is filed to avoid future legal complications.

6. Counter affidavit was filed by the petitioner opposing the said application and taking the plea that though written statement indicated the typographical mistakes in the plaint, no steps were taken to file petition seeking amendment of the plaint before commencement of trial, and that as he filed the said petition after commencement of trial, the said amendment could not be allowed in view of the proviso to Order VI Rule 17 CPC.

7. By order dt.19.04.2016, the Court below allowed the said application. It held that the mention of wrong date was a typographical mistake, which the petitioner could not identify at the time of filing of the suit, but during his evidence, as PW-1, he had specifically stated about it, and the Court itself had advised him to file amendment petition to avoid future legal complications. It also held that though the amendment petition had been filed after commencement of the trial, the proviso to Order VI Rule 17 CPC did not totally takeaway the power of the Court to permit the amendment, that too with regard to a typographical error inadvertently crept in, and so it allowed the application.

8. Challenging the same, this Revision is filed.

9. Counsel for petitioner contended that the application for amendment of plaint could not have been allowed by the Court below after commencement of trial in view of the proviso to Order VI Rule 17 CPC, that there was no due diligence on the part of the 1st

respondent/plaintiff in seeking such amendment even though written statement was filed pointing out the said errors, and grave prejudice would be caused to the petitioner if such amendment is allowed.

10. It is important to note that the date on which the Promissory Note in question was executed was in fact 26.09.2007 as per the Promissory Note filed along with the plaint, but due to typographical mistake, the date was wrongly mentioned in paras 1, 5, 7 and 9 of the plaint.

11. The 1st respondent had filed chief examination affidavit mentioning about the said mistake, and he was advised by the Court itself to file application for amendment, and so he filed the said amendment application I.A.No.766 of 2015 on 19.04.2011, but the Court kept it pending without deciding it till 19.04.2016, for about 5 years, and in the meantime, the trial according to the petitioner's counsel was completed.

12. It is unfortunate that the trial Court had kept the amendment petition pending for five years without deciding the same. However, the delay of the lower Court in disposing of the said application should not be to the detriment of the 1st respondent, who, having come to know about the typographical mistakes, filed the application on 19.04.2011 itself.

13. Though technically trial may have commenced, the amendment application cannot be rejected since the application itself was filed with due diligence by the petitioner after detecting the

errors and seeking correction of the same, at the earliest point of time, immediately after he filed his affidavit in lieu of his chief examination.

14. I therefore find no error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India and I find no merit in this Civil Revision Petition.

15. Accordingly, this Civil Revision Petition is dismissed. However, petitioner is given opportunity to file additional written statement and both parties shall be permitted to lead evidence if required and then the Court below shall proceed to decide the suit on merits. No order as to costs.

16. Consequently, Miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

04th February, 2019.

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