

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.331 of 2019

ORDER:

This civil revision petition is filed by the petitioner/plaintiff under Article 227 of the Constitution of India, challenging the order dated 21.01.2019 passed in I.A.No.145 of 2018 in O.S.No.369 of 2013 by the Additional Rent Controller-cum-XVIII Junior Civil Judge, Secunderabad, wherein the application filed by the petitioner/plaintiff under Order VI Rule 17 read with Section 151 of CPC, seeking permission to carryout certain amendments in the plaint, was partly allowed permitting the petitioner/plaintiff to correct the typographical error in relief no.(1) from "*Rule Nos.III, VI, VI, VII*" to "*Rule Nos.III, V, VI, VII*" and declined to add the relief (vii) i.e, "*to declare the Rule XI relating to balloting of applications for membership to the defendant No.1 club, to be arbitrary and opposed to the law*".

2) Heard the arguments of Mrs. Anjana Taggarse Motupalli, who appeared as party-in-person, Mr.Zeeshan Adnan Mahmood, learned counsel for the respondents and perused the record.

3) Mrs.Anjana Taggarse Motupalli, who appeared as party-in-person, would contend that the Court below erred in declining to add the proposed relief(vii) in the plaint. The proposed amendment would not change the nature of the suit. Omission to frame the relief pertaining to balloting rule in the plaint, was accidental and inadvertent. For effective and proper adjudication of the subject suit, the Court below ought to have permitted the petitioner to add

the relief sought for. No prejudice would be caused to the respondents, if the proposed relief is added. In support of her contentions, she relied upon the decisions reported in *Bhagwati Prasad vs. Chandramaul*¹ and *Mohinder Kumar Mehra vs. Roop Rani Mehra and others*² and ultimately prayed to allow the civil revision petition as prayed for.

4) On the other hand, learned counsel for respondents would contend that after commencement of arguments in the suit, the subject Interlocutory Application was filed. The proposed amendment challenging the Rule XI of defendant No.1 club rules would change the nature of the suit as the revision petitioner never questioned the Rule of balloting in the pleadings. Further, the proposed amendment would amount to setting up of a new cause of action and distinct issue would come for determination in the Original Suit. Therefore, the Court below is justified in declining to allow the amendment sought for by the revision petitioner. In support of his contention, learned counsel relied upon the following decisions and ultimately prayed to dismiss the revision petition:

- i) *Vijay Hathising Shah and another v. Gitaben Parshottamdas Mukhi and others*³
- ii) *Dameella Venkata Laxmi vs. Damella Santhamma and others*⁴
- iii) *Ankam Govindamma vs. Syed Shafeeullah*⁵
- iv) *Bhamidimarri Vijaya Lakshmi vs. M. Uma Lakshmi*⁶

¹ AIR 1966 Supreme Court 735

² (2018) 2 SCC 132

³ (2019) 5 SCC 360

⁴ Order dated 09.08.2019 passed in Civil Revision Petition No.1865 of 2016 by this Court.

⁵ 2018 SCC OnLine Hyd 172

⁶ 2017 SCC OnLine Hyd 375

5) In view of the submissions made by both sides, the point for determination is:

“Whether the petitioner/plaintiff can be permitted to amend the plaint as sought for in the subject Interlocutory Application?”

6) POINT: As seen from the record, the petitioner/plaintiff filed the subject Interlocutory Application seeking permission to carryout the following amendments in the plaint:

- i) *To amend the phrase in relief no.(1) from "Rules Nos.III, VI, VI, VII, to read as "Rules Nos.III, V, VI, VII" by correcting the typographical error, along with consequential amendments, to the plaint averments.*
- ii) *To add the following relief, after relief (vi) as relief (vii)*
“to declare the Rule XI relating to balloting of applications for membership to the defendant no.1 club to be arbitrary and opposed to the law relating to equality, dignity, fairness, equal opportunity and the principles of natural justice being completely unguided, unfettered, unregulated and undisciplined and conferring arbitrary power to the defendant no.2 managing committee in the matters of internal regulation without any guidelines in the contractual Rules or Byelaws for the exercise of such unfettered power vested in defendant no.2 managing committee”.
- iii) *To consequentially renumber the following reliefs along with any other consequential amendments and file a comprehensive amended copy of the plaint and pass such other order or orders as are deemed fit and proper in the interest of justice and in the circumstances of the case.*

The Court below having heard and examined the submissions made by both sides in detail, was of the view that while dealing with an application for amendment of pleadings, the Court should not go into the correctness or falsity of the proposed amendments and the amendment application can be allowed if the Court is satisfied with

the reason explained by the petitioner. In the instant case, the petitioner intends to correct the typographical error crept in relief No.1 as “Rule Nos.III, VI, VI and VII” instead of “Rule Nos.III, V, VI and VII”. The Court below held that such correction was necessary for effective and complete adjudication of the subject matter of the suit and it would not alter the character or nature of the suit. Furthermore, such amendment would not introduce a new cause of action and no prejudice would be caused to the other side (respondents) and allowed the application for amendment in part to that extent.

7) Insofar as adding of relief (vii) in plaint i.e, “to declare the Rule XI relating to balloting of applications for membership to the defendant No.1 club to be arbitrary and opposed to law” is concerned, the Court below was of the view that the petitioner did not initially challenge the balloting Rule. Earlier, the petitioner filed amendment application vide I.A.No.313 of 2014 in the subject suit and the same was allowed vide order dated 24.04.2015. In the subject suit, recording of evidence was completed, plaintiff advanced her arguments and the defendants advanced their arguments partly and during that stage, the petitioner filed subject Interlocutory Application seeking certain amendments. The Court below having satisfied with the explanation given by the petitioner, allowed the subject amendment application in part to the extent as indicated above. So far as adding of relief (vii) in the plaint is concerned, the Court below is of the opinion that if such amendment is allowed, it introduces new cause of action. It is contended by the petitioner that inadvertently and accidentally, the

balloting Rule was not challenged in the plaint. There was ample opportunity to the petitioner, throughout the proceedings till the arguments were advanced by her, to notice the same. A specific mention is made by the learned counsel for the respondents that in the course of arguments when the balloting Rule was brought to the notice of the Court below, the petitioner has come up with the subject Interlocutory Application to add the proposed relief i.e, relief (vii) in the plaint. Therefore, it cannot be compounded that it is an accidental or inadvertent omission on the part of the petitioner in not challenging the balloting Rule earlier. This Court is of the firm view that if the subject amendment application is allowed to add the relief (vii) in the plaint, it changes the nature and character of the suit, which is not permissible belatedly. This Court is also in agreement with the reasons assigned by the Court below in declining the relief to the said extent. The decisions relied upon by the petitioner are distinguishable from the facts and circumstances of the case on hand. No legal infirmity has been found in the impugned order. Therefore, this Civil Revision Petition does not merit consideration to concede the request made by the petitioner.

8) Accordingly, this Civil Revision Petition is dismissed. No costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

Date: 21st January, 2020
scs

Dr. SHAMEEM AKTHER, J