



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. (MD) No.1667 of 2021

and

C.M.P. (MD) No.9016 of 2021

WEB COPY

Mathias ... Petitioner /1st Respondent/ 1st Defendant

Vs.

1.T.Anitha Mary ... 1st Respondent /Petitioner/ Plaintiff

2.Shiji

3.Biju ... Respondents 2 & 3 / Respondents 2 & 3/
Defendants 2 & 3

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to allow the Civil Revision Petition and set aside the docket order dated 02.09.2021 made in I.A.No.2 of 2021 in O.S.No.158 of 2013 on the file of the Additional Subordinate Court, Padmanabhapuram.

For Petitioner : Mr.V.M.Balamohan Thambi

O R D E R

The Civil Revision Petition has been filed against the order passed in I.A.No.2 of 2021 in O.S.No.158 of 2013 on the file of the Additional Subordinate Court, Padmanabhapuram, by allowing the petition seeking amendment of plaint after commencement of trial.

2.The learned counsel for petitioner would submit that the petitioner is the first defendant in the suit in O.S.No.158 of 2013 pending on the file of the Additional Subordinate Court, Padmanabhapuram, which was filed by the first respondent/ plaintiff for recovery of money. The petitioner has filed the written statement and issues were framed and trial had also commenced and at that stage, the first respondent /plaintiff had filed a petition seeking amendment of plaint and the trial Court by a cryptic docket order dated 02.09.2021, without any reasoning and without giving an opportunity to file the counter, allowed the same.

3.The learned counsel for the petitioner would further submit that the impugned order is hit by proviso to Rule 17 Order VI of the Code of Civil Procedure. The learned Judge without there being any finding as to due diligence as contemplated under proviso to Rule 17 order VI of the Code of Civil Procedure, has allowed the amendment petition.



4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. It is relevant to refer to proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908, is extracted hereunder :

17. Amendment of pleadings— The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial".

6. The petitioner is the first defendant in O.S. No.158 of 2012 pending on the file of the Additional Subordinate Court, Padmanabhapuram, which was filed by the first respondent/ plaintiff for recovery of money. The petitioner had filed a written statement and issues were framed and trial has commenced and P.W.1 has been examined and at that stage, the plaintiff had filed an application seeking for amendment of plaint.

7. The Trial Court without the counter being filed satisfied with the reasons stated in the petition had allowed the same by a cryptic order dated 02.09.2021, which reads as under:

" For counter of R2 to R4. Counter not filed. Reason stated in the petition is satisfied. Hence the petition is allowed. No cost".

8. The trial Court had not returned any finding with regard to his satisfaction that in spite of due diligence, party could not have introduced amendment before the commencement of trial.

9. In **Pandit Malhari Mahale Vs. Monika Pandit Mahale and Others** reported in **2020 (11) Supreme Court Cases 549**, the Hon'ble Apex Court has held as under :

"7. In the present case, the Civil Judge has not returned any finding that the Court is satisfied that in spite of due diligence, the party could not have raised the matter before the commencement of trial. In *Vidyabai & Ors. v. Padmalatha & Anr.* [(2009) 2 SCC 409], this Court observed in para 19 as under:

"19. It is primal duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be



allowed. However, proviso appended to Order 6 Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction in a case of this nature is limited. Thus unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint."

8. There being no finding by the Court that the Court is satisfied in spite of due diligence, the party could not introduce amendment before commencement of the trial, the order of the Trial Judge is unsustainable. The High Court has not adverted to the above aspect of the matter. In view of aforesaid, we allow the appeal and set aside the order of the High Court as well as of the Civil Judge, the amendment application stands dismissed."

10. The trial Court has not returned any finding as to due diligence and hence, this Court is of the view that the docket order dated 02.09.2021 in I.A. No.2 of 2021 passed by the Trial Court is liable to be set aside.

11. In view of the same, the Civil Revision Petition stands allowed. The docket order dated 02.09.2021, passed in I.A.No.2 of 2021 in O.S.No.158 of 2013 on the file of the Additional Subordinate Court, Padmanabhapuram, is set aside. The matter is remitted back to the trial Court and the trial Court shall give an opportunity to the petitioner / 1st defendant to file a counter and thereby, after hearing both the parties and pass orders on merits and in accordance with mandate of proviso to Rule 17 Order VI of the Code of Civil Procedure. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

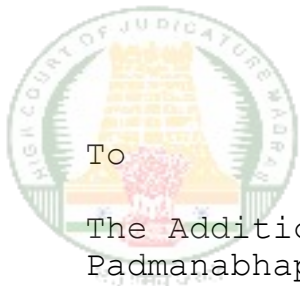
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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

The Additional Subordinate Court,
Padmanabhapuram,

+1 CC to M/s.V.M.BALAMOHAN THAMBI, Advocate (SR-33421[F]
dated 01/11/2021)

C.R.P. (MD) No.1667 of 2021
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SS (CO)

GC/SKN(17.11.2021) 4P 3C