



CRP(PD)No.2375 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.12.2021

PRONOUNCED ON : 21.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.R.P.(PD).No.2375 of 2017

and

C.M.P.No.11223 of 2017

Bhakthavatchalam

... Petitioner

Vs.

Deiveegan

... Respondent

Prayer:- This Civil Revision Petition has been filed against the fair and decretal order, dated 29.08.2016, passed in I.A.No.156 of 2016 in O.S.No.18 of 2005, on the file of I Additional Subordinate Court, Villupuram.

For Petitioner : Mr.N.Suresh

For Respondent : Mr.M.V.Seshachari



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ORDER

The Civil Revision Petition has been filed against the fair and decretal order, dated 29.08.2016, passed in I.A.No.156 of 2016 in O.S.No.18 of 2005, on the file of I Additional Subordinate Court, Villupuram.

2. Petitioner herein is the plaintiff and respondent is the defendant in the suit in O.S.No.18 of 2005 before the Court below. The suit was filed by the petitioner against the respondent for specific performance of the contract of sale and to register a sale deed and also for a direction to the respondent to refund the amounts received by him viz., Rs.94,000/- together with lawful interest and for costs. Pending suit, the respondent has filed the application in I.A.No.156 of 2016, seeking to receive the additional written statement filed in the suit. Since the said application was allowed on payment of costs of Rs.2000/- to the petitioner herein by the impugned order, the Civil Revision Petition has been filed by the petitioner.

3. Learned counsel for the petitioner would contend that filing of



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additional written statement, which is inconsistent, that too after commencement of trial, cannot be permitted. In support of his contention, he would rely on the following decisions reported in *CDJ 2002 MHC 714 [Kolandasamy Vs. Rathinam, Rathinayal]*; *CDJ 2009 MHC 6012 [Sekar & Another Vs. A.N.Sengodagounder]*; *CDJ 2009 SC 1492 [P.A.Jayalakshmi Vs. H.Saradha & Others]*; *CDJ 2010 MHC 2479 [P.S.Karunakaran & Another Vs. M/s. Madras Race Club, Represented by Ms.Aruna, officer In-Charge (Legal), Guindy, Chennai and an order of this Court made in CRP(PD)No.3258 of 2018, dated 26.10.2018.*

4. On the contrary, learned counsel for the respondent would submit that suit agreement was executed as security and, in order to prove his case, he has now come forward with an additional written statement; that on the same day of suit agreement, an unregistered agreement was executed in the presence of same witnesses, which is in line with the original written statement, and, therefore, the Court below has rightly allowed the application, which cannot be faulted with. He relied upon the following decisions in 2007 (1) *LW 429 [Thiyagarajan Vs. Manivannan]*; 2007 (5) *SCC 602 [Usha Galashaheb Swami and Others Vs. Kiran Appaso Swami*



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and Others; and 2009 (5) CTC 29 [John C.Christian Vs. R.Adhikesavan].

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5. This Court has heard the learned counsel for the petitioner and the respondent and also gone through the order impugned.

6. The petitioner is the plaintiff in the suit filed for specific performance. The present revision is against the order of the Court below, allowing the respondent/applicant in I.A.No.156 of 2016, filed under Order 8 Rule 9 of the Code of Civil Procedure, to file an additional written statement in the suit.

7. At this juncture, the issue in question is to be considered in the light of Order 8 Rule 9 of the Code of Civil Procedure. Before the Civil Procedure Code (Amendment) Act,2002, (Act 22 of 2002), Order 8, Rule 9 CPC, under the nomenclature “subsequent pleadings”, read as under :

“9. Subsequent pleadings.- No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off or counter-claim shall be presented



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except by leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.”

8. Though the above rule was omitted by the Civil Procedure Code (Amendment) Act, 1999, (Act 46 of 1999), it was reintroduced and substituted by the Civil Procedure Code (Amendment) Act, 2002, (Act 22 of 2002) with effect from 01.07.2002. By the said Amendment Act, 2002, (Act 22 of 2002), Rule 9, Order 8 CPC was re-enacted as follows :

“9. Subsequent pleadings.– *No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.”*

9. Pursuant to the amended Rule 9 of Order 8, Court was given power to require at any time a written statement or an additional written statement



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to be filed in a case within a time limit of 30 days, to be fixed by the Court.

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The only difference between the old Code and the new Code as far as Order 8, Rule 9 is concerned is that in old Code, it was the discretion of the Court to fix the time for presenting the written statement, whereas, in the new Code, there is a fixed period of 30 days for presenting written statement or additional written statement. Hence, after the amendment, the Court may permit the filing of a written statement or an additional written statement from any of the parties, but the Court must have to fix a time limit for presenting the statement, which should not be more than 30 days. Moreover, the power under Order 8, Rule 9 CPC is to be used only in exceptional cases and for reasons recorded in writing and cannot be exercised by the defendant as a matter of right. Such exercise of discretion must be judicial and not capricious and such right must be in keeping with the spirit of the amended Code. However, merely because the amendment sought is alleged to be inconsistent with the previous case of the defendant, it is not a good reason for rejecting the application of the defendant for amendment. As per general rule, in cases of this nature, the leave to amend or to file additional written statement is granted, unless the party pleading for amendment is acting malafidely or by the party's own blunder if some injury is inflicted to



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his opponent, which cannot be compensated by award of costs, and, if the original omission arose from negligence, carelessness, or accidental error, the defect may be allowed to be remedied, if no injustice is done to the other side.

10. No pleading, subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim, shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may, at any time, require a written statement or additional written statement from any of the parties and fix a time for presenting the same. Any ground of defence, which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off, may be raised by the defendant or the plaintiff in his written statement/additional written statement or reply affidavit/additional pleading, as the case may be.

11. If the plaintiff amends his plaint with leave of the Court, the defendant should be given leave to file a subsequent pleading. Similarly, if the defendant amends his written statement, which too with leave of the Court, leave should be granted to the plaintiff to file his additional pleading,



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to react to it. Leave to file an additional pleading may be granted to take into account the subsequent events, occurring after the filing of the suit and to avoid multiplicity of suits.

12. Mere delay is not sufficient to refuse amendment of pleadings or an additional written statement. In the case of *Olympic Industries v. Mulla Hussainy Bhai Mulla Akberally & Ors.*, 2009 (15) SCC 528, the Hon'ble Supreme Court, following its earlier decision in *Usha Balasaheb Swami & Ors. v. Kiran Appaso Swami & Ors.* (2007) 5 SCC 602, held that even by filing an amendment or additional written statement, it is open to defendant to add a new ground of defence or to substitute or alter the defence or even to take inconsistent pleas in the written statement so long as the pleadings do not result in causing grave injuries/irretrievable prejudice to plaintiff. It was further observed therein that mere delay is not sufficient to refuse amendment of pleadings or an additional written statement. If there is delay in amendment of pleadings or filing of an additional written statement under Order 8 Rule 9 of the Code of Civil Procedure, 1908, where no prejudice is caused to the party opposing such amendment or acceptance of additional written statement, then it could easily be compensated by costs. Apart from



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that, even if the examination of a prosecution witness or his cross-examination is over, then also, it is open to the Court to accept the additional written statement filed by the other party, by putting some cost penalty for the delay.

13. As a matter of fact, no supplemental written statement can be filed after the plaintiff's case is closed. Order 8, Rule 9 CPC, however, invests the Court with the widest possible discretion and enables it to accept an additional written statement filed subsequently, upon such terms as the Court thinks fit.

14. It is worth-mentioning to note that the rules of procedure, such as the provision of Order 8, Rule 9 of the Code of Civil Procedure, are aimed at not only advancing the cause of justice, but also doing substantial justice to the parties. In no case, the rule of procedure can be brought to be interpreted in a manner, which may thwart the judicial process. The ultimate aim of all laws, including procedural laws, has to finally set at rest the controversies between the parties. Thus, while allowing additional written statement or refusing to accept the same, the Court should only see, if such



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additional written statement is not accepted, the real controversy between the parties could not be decided. Hence, the last determining factor is, on filing an additional written statement, there is no injustice or prejudice caused to the other party and also it would help the Court to decide the real controversy between the parties.

15. As already stated above, under Order 8 Rule 9 of the Code of Civil Procedure, while filing an additional written statement, it is open to the defendant to add a new ground of defence or substituting or altering the defence or even taking inconsistent pleas in the written statement as long as the pleadings do not result in causing grave injustice and irretrievable prejudice to the plaintiff or displacing him completely. It is also a well-established principle that Courts should be more generous in allowing the amendment of a written statement than in the case of the plaint. Further, it is the duty of the Courts to prevent misuse of the pleadings by the litigant. Courts have to ensure that what could not be achieved by getting the pleading amended should not be allowed to be got over, by filing reply or rejoinder, as the case may be, and vice versa.



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16. As for the contention of the learned counsel for the petitioner that the respondent had filed a belated application for acceptance of an additional written statement when examination of P.W.1 was already over, it is to be stated that, as already stated above, delay is not a ground, for which additional written statement could not be allowed, as it is well settled that mere delay is not sufficient to refuse to allow amendment of pleadings or filing of additional written statement. In other words, delay is no ground for dismissal of an application under Order 8 Rule 9 of the Code of Civil Procedure, where no prejudice is caused to the party opposing such amendment or acceptance of additional written statement, which could easily be compensated by costs. That apart, in the present case, the delay in filing the additional written statement has been properly explained by the respondent. The averments made in the additional written statement could not be raised by the respondent earlier since the second agreement executed between the petitioner and the respondent was secured by the respondent only recently, as it was in the custody of one Kannan, who was closely associated with the petitioner, and that the second agreement is only to show and prove his consistent and definite case that the suit agreement was executed only as security for a sum of Rs. 84,000/-, advanced by the



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petitioner, and not intended to convey the suit properties to him. This explanation, in the considered opinion of this Court, cannot be rejected.

17. One more contention of the learned counsel for the petitioner is that the respondent cannot be permitted to introduce a new case totally by way of an additional written statement. In this connection, it is to be stated that the filing of additional written statement by the respondent, as explained above, is in line with the written statement already filed by him. Even otherwise, as stated above, by filing an amendment petition or additional written statement, it is open to the respondent to add a new ground of defence or substituting or altering the defence or even taking inconsistent pleas in the additional written statement as long as the pleadings do not result in causing grave injustice and irretrievable prejudice to the petitioner or displacing him completely. This is also in tune with the well settled proposition that Courts should be more generous in allowing the amendment of the written statement of the defendant than in the case of plaintiff.

18. The decisions relied upon by the learned counsel for the parties are not relevant to the facts of the present case and hence they are not made



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applicable herein.

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19. This Court understands the agony of the petitioner that the application for filing additional written statement has been filed eleven years after filing of the suit. However, since the filing of additional written statement could not cause any prejudice to the petitioner, which would otherwise be compensated in terms of costs, considering the enormous delay, this Court is inclined to enhance the award of costs to Rs.10,000/-, to be payable by the respondent to the petitioner, instead of Rs.2,000/-, as ordered by the Court below. The said costs must be paid or deposited by the respondent in the Court below in the name of the petitioner within one month from the date of supply of a copy of this order to the Court below and, in default of deposit of the aforesaid amount within the time specified as above, the additional written statement filed by the respondent shall stand automatically rejected. On such deposit, the petitioner shall be entitled to withdraw the aforesaid sum of Rs.10,000/- from the Court below, without prejudice to his rights and contentions in the original case.

20. With the above modification in the order of the Court below as regards costs, this Civil Revision Petition is dismissed. In view of the fact



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that the suit is of the year 2005, the I Additional Subordinate Court, Villupuram, is directed to dispose of O.S.No.18 of 2005 on its file as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

21.02.2022

Index :Yes
Internet : Yes
Speaking order

ssi/dixit

To

1. I Additional Subordinate Court,
Villupuram.
2. The Section Officer,
V.R. Section,
High Court of Madras.



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S.KANNAMMAL, J.

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