



CRP (MD) No.1721 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 26.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B. PUGALENDHI**

CRP (MD) No.1721 of 2022

and

CMP (MD) No.7551 of 2022

S.Emerson

... Petitioner

Vs

P.Tiburcuiss

... Respondent

PRAYER: Civil Revision Petition is filed under Section 227 of the Constitution of India, to set aside the fair and decreetal order dated 25.07.2022 passed in IA.No.2 of 2022 in OS.No.283 of 2021 on the file the Principal District Judge, Kanyakumari at Nagercoil.

For Petitioner : Mr.M.P.Senthil

Respondent : Mr.John Jeyakumar

ORDER

This civil revision petition is filed as against the fair and decreetal order dated 25.07.2022 passed in IA.No.2 of 2022 in OS.No.283 of 2021 on the file the Principal District Court, Kanyakumari at Nagercoil.



CRP (MD) No. 1721 of 2022

2.The suit in OS.No.283 of 2021 is filed by the petitioner claiming compensation of Rs.12 lakh as against the respondent that he has caused loss to his business and also for a consequential relief of permanent injunction restraining the respondents from dismantling or demolishing the Kannikai Matha Ice Plant and the machinery installed in the suit schedule property at Kolacheal village. Pending the suit, the petitioner has filed an application in IA.No.2 of 2022 seeking certain amendment to the plaint and to the relief sought for in OS.No.283 of 2021. The trial Court dismissed the said application that it is post trial amendment and the petitioner has not satisfied that in spite of his due diligence, he could not raise a plea before the commencement of the trial. Aggrieved over the same, the present civil revision petition is filed.

3.The learned Counsel for the petitioner submits that the petitioner and the respondent are partners of one Kannikai Matha Ice Plant and they have also entered into a partnership dated 21.04.2003. The respondent has paid the share in the profits to the petitioner regularly for some period, but now he is attempting to close down the said



CRP (MD) No.1721 of 2022

Ice plant without the petitioner's knowledge.

The respondent also filed a suit in OS.No.36 of 2021 before the learned District Munsif, Eraniel seeking permanent injunction restraining this petitioner and his men from trespassing into the suit schedule property. Pursuant to the orders of this Court, the suit filed by this respondent before the District Munsif, Eraniel was transferred to the Principal District Court, Kanyakumari @ Nagercoil for joint trial with a direction to dispose of both suits within a period of three months by the orders of this Court in CRP(MD)No.183 of 2022 dated 23.03.2022. Accordingly, the suit filed by the respondent in OS.No.36 of 2021 was transferred to the Principal District Court, Kanyakumari and renumbered as OS.No.169 of 2021 for joint trial. The respondent has adduced his evidence in his suit in OS.No.169 of 2022 and at that point of time, this petitioner has filed an interlocutory application in IA.No.2 of 2022 in OS.No.283 of 2021 seeking certain amendments. However, the trial Court without considering the scope and object of Order VI Rule 17 of CPC, simply dismissed the said application that trial has commenced. The amendment is sought in OS.No.283 of 2021. The trial has



CRP (MD) No.1721 of 2022

not commenced in the other suit in OS.No.169 of 2022 filed by the respondent. The respondent was examined as PW1 on 23.06.2022 and the application under Order VI Rule 17 CPC was filed on 27.06.2022 and without considering these facts, without considering the issue involved and the necessity for the amendment, the trial Court has mechanically dismissed the application.

4.The learned Counsel for the petitioner has relied on the following judgments in support of his contention:

i.Life Insurance Corporation of India Vs Sanjeev Builders Private Limited and another
[Civil Appeal No.5909 of 2022 (Arising out of SLP(C)No.22443 of 2019) dated 01.09.2022].

ii.O.P.Ravindran Vs. M.S.Subbaiah and another reported in 2021 (3) CTC 274.

5.The learned Counsel for the respondent submits that the respondent is the sole proprietor of Kannikai Matha Ice Plant and there is no such a partnership agreement dated 21.04.2003 as claimed by the revision petitioner and due to old age, the respondent is intending to wind up his



CRP (MD) No.1721 of 2022

business. Kannikai Matha Ice Plant is an exclusive property of the respondent and he has completed his evidence. Thereafter, this petitioner has filed the present interlocutory application, only with an intention to drag on the proceedings and the petitioner has not made out any case that in spite of his due diligence, he could not make out a case before commencement of trial.

6.The learned Counsel for the respondent has relied on the following judgment in support of his contention:

i.J.Samuel and others Vs Gattu Mahesh and others, reported in **(2012) 2 Supreme Court Cases 300 ;**

ii.Minor Balakumaran Vs Gunasekaran reported in **2012 (5) CTC 37.**

7.This Court considered the rival submissions and perused the materials placed on record.

8.The petitioner has filed the above suit in OS.No.283 of 2021 before Principal District Court, Kanyakumari,



CRP (MD) No.1721 of 2022

seeking compensation as against the respondent for causing loss to his business. The respondent has also filed a suit in OS.No.36 of 2021 before the District Munsif, Eraniel seeking permanent injunction as against this petitioner not to trespass into the suit property Kannikai Matha Ice Plant. Pursuant to the orders of this Court in CRP (MD) No.183 of 2022 dated 23.03.2022, both suits were ordered to be tried together by the learned Principal District Judge, Kanyakumari and the same are now pending. The trial is commenced in OS.No.283 of 2021. The respondent was also examined as PW1 on 23.06.2022. The present interlocutory application has been filed on 27.06.2022. The petitioner claims that they are partners in Kannikai Matha Ice Plant and the respondent has misappropriated around a sum of Rs.1,50,000/- from the partnership properties. The suit in OS.No.283 of 2021 was filed in the year 2021 and it was posted for trial on 24.06.2022 and the trial is yet to be commenced in OS.No.169 of 2022. Immediately the petitioner has filed the present amendment application. The petitioner has also relied on certain proceedings dated 02.11.2021 obtained under RTI Act with regard to the partnership firm dated 21.04.2003.



WEB COPY

9. It would be relevant to refer to the decision of the Hon'ble Supreme Court in Civil Appeal No.5909 of 2022 (Arising out of SLP(C) No.22443 of 2019) dated 01.09.2022, wherein certain guidelines were issued in respect of amendment to the suit;

"(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed,

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and



WEB COPY



CRP (MD) No.1721 of 2022

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.



(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.



WEB COPY



CRP (MD) No.1721 of 2022

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed."



CRP (MD) No.1721 of 2022

10. Applying the ratio laid down by the Hon'ble Supreme Court and also considering the facts and circumstances of the case, this Civil Revision Petition is allowed. No costs. Consequently connected miscellaneous petition also stands closed.

26.10.2022

Index: Yes/No.

dsk

To

The Principal District Judge,
Kanyakumari at Nagercoil.



WEB COPY



CRP (MD) No.1721 of 2022

B. PUGALENDHI, J.

dsk

CRP (MD) No.1721 of 2022

26.10.2022