



C.R.P.No.1137 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.01.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.1137 of 2021 &
C.M.P. No.8792 of 2021

C.N.Srinivas

... Petitioner

Vs.

1. M/s Jeevandas Laljee & Son
No.32/17, 1st Floor, II main road,
C.I.T.Colony, Mylapore,
Chennai – 600 004

2. Bhupen Asher

... Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decree dated 16.12.2019 dismissing I.A.No.1 of 219 in O.S.No.2069 of 2018 on the file of learned XIV Assistant Judge, City Civil Court, Chennai and allow the petition.

For Petitioner : Mr.S.Vasudevan

For Respondent : Mr.K.F.Manavalan



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ORDER

The present Civil Revision Petition has been filed under Article 227 of Constitution of India to set aside the order and decree dated 16.12.2019 dismissing I.A.No.1 of 2019 in O.S.No.2069 of 2018 on the file of learned XIV Assistant Judge, City Civil Court, Chennai and allow the petition.

2. The brief facts of the case is as follows:-

(i) The petitioner is the plaintiff and the respondents 1 and 2 are the defendants 1 and 2. The 1st Defendant is a Partnership Firm and the 2nd Defendant is the present Managing Partner of the 1st Defendant Firm. The Plaintiff lent money in favour of the 1st Defendant Firm from the year 1997 till 2002 on several occasions on execution of Demand Promissory Notes. The 1st Defendant was periodically making the payments only towards interest and agreed to repay the principal as and when demanded by the Plaintiff. On 2nd November, 2016, the 1st Defendant sent a letter to the Plaintiff acknowledging their liability to pay. By the same letter, the plaintiff has also acknowledged that interest was paid to the plaintiff upto August, 2016. Thereafter, they stopped paying the interest.



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(ii) Hence the petitioner filed a suit for realization of sum of Rs.2,86,375/- from the defendants. The defendants had filed Written Statement in the above said suit. While so, the plaintiff by way of application under Order 6 Rule 17 of the Civil Procedure Code sought for an amendment in plaint stating that, the Demand Promissory Notes were signed by Mr.Hansraj Asher, the then partner, who approached the Plaintiff for the loan, being a close friend of the plaintiff. However, in Paragraph Nos. 3 and 11 of the plaint, the plaintiff has erroneously averred that the 2nd Defendant had executed the said Promissory Notes. But the 2nd Defendant took the charge as the Managing Partner of the 1st Defendant firm only in the year 2007, as per written statement by the defendants. The error is by mistake and the plaintiff, in paragraph nos.3 and 11 of the Plaint intended to state that the Promissory Notes were signed by the then partner of the 1st Defendant, but mistakenly has stated that the Promissory Notes were signed by the 2nd Defendant who is the present Managing Partner of the 1st Defendant. The error as stated above due to oversight.

3. On the other hand, the respondents, taking shelter of the Written Statement filed on October, 2018, would submit that when the matter is



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about to proceed to trial, the petitioner has come forward with this petition which is not only belated one but clearly an after-thought for the obvious purpose to avert the inevitable consequences in law. It is settled law that as a general rule, a fresh suit on the amended claims would be barred by limitation on the date of application and hence the petition for amendment ought to be rejected. If the petitioner is allowed to file a suit, as per the amendment, against the respondents, the same would be barred by law. Hence sought to dismiss the petition.

4. The Trial court by its order dated 16.12.2019 dismissed the said application for amendment of plaint on the ground that the mistake is not inadvertent and the proposed amendment is not bonafide. Aggrieved by the same the petitioner/ plaintiff has filed the present Civil Revision Petition.

5. The learned counsel for the petitioner submitted that the impugned order dated 16.12.2019 is contrary to law. When the learned Judge had considered that the mistake was not willful and did not alter the pleadings in the plaint, the impugned order erred in dismissing the amendment petition. Further, an amendment which does not change the nature and character of the suit cannot be refused on a technicality. Also it is not the



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case of the petitioner to bring new facts into the case and it is an inadvertent mistake committed merely due to oversight and if the amendment petition is allowed, no prejudice would be caused to the respondent, thereby pleaded to set aside the order passed by the court below and allow the present Revision Petition.

6. Also, the learned counsel for the petitioner relied on the Judgment of the **Hon'ble Supreme Court reported in 2022 SC Online SC 1128 [Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Another]** wherein among the other things, it is held that while 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.

7. Per contra, the learned counsel for the respondent submits that the averments of the petitioner are clear attempt to set up a new case and to get over the glaring lacuna, hence the same has to be rejected in limine. It displays non-exercise of due diligence and does not disclose the reasonable cause and hence the mistakes are not inadvertent errors but deliberate falsehood stated in the plaint, thereby sought to dismiss the



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petition. In support of his contention, he has relied on the Judgment of the **Hon'ble Supreme Court reported in (1976) 4 Supreme Court Cases 320 [M/s Modi Spinning & Weaving Mills Co., Ltd., and Another Vs. M/s Ladha Ram & Co.]** wherein it is held that “*when the amendment is sought to displace the plaintiff completely from the admissions made by the plaintiff and if such amendments are allowed, the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants*”.

8. Heard the learned counsel on either side and perused the documents placed on record.

9. It is the contention of the petitioner that the subject mentioned promissory notes were signed by the erstwhile partner, viz., Mr.Hansraj Asher and it was inadvertently mentioned in the plaint that the same was signed by the 2nd defendant. Whereas, from the documents placed on record, it is seen that petitioner has mentioned in the plaint that the 2nd respondent has signed promissory notes and the same was repeated not once, at least twice in Paragraph Nos. 3 & 11. However, it was categorically denied in the Written Statement and the specific case of the



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Respondents is that the 2nd Respondent did not execute the subject Promissory Notes, especially, on the dates as alleged by the petitioner. Further, according to the respondents, there are material suppression of facts in as much as the entire suit transaction appears to be collusive and fraudulent in nature, and does not bind the Respondents at all.

10. It is relevant to note that during the institution of suit, the petitioner was aware of the fact that the Promissory Notes were signed by the erstwhile partner, inspite of the same, the petitioner has stated in the plaint that it was signed by the 2nd Defendant herein, not only once, but twice, which cannot be construed as an inadvertent error. The amendment of a plaint cannot be allowed if it is likely to change the nature of the suit. **The Hon'ble Supreme Court in the case of Usha Balashaheb Swami and Ors. Vs Kiran Appaso Swami and Ors reported in [2007(5)SCC602],** has held that the general principle is that the amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim.

11. That apart, the **Hon'ble Supreme Court in M/s Revajeetu Builders Vs. M/s. Narayanaswamy & Sons & Ors. [2009(10)SCC84],**



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has held that one distinct cause of action should not be substituted for another and that the subject-matter of the suit should not be changed by amendment. The Hon'ble Supreme Court further held that some basic principle ought to be taken into consideration while allowing or rejecting the application for amendment, as numbered below:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;*
- (2) whether the application for amendment is bona fide or mala fide;*
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*
- (6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.*

12. In the case reported in **[2015(4)SCC182] Mount Mary Enterprises Vs. Jivratna Medi Treat (P) Ltd**, the Honble Supreme Court



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held that “...as per the provisions of Order 6, Rule 17 of the Civil Procedure Code, ‘the amendment application should be normally granted unless by virtue of the amendment nature of the suit is changed or some prejudice is caused to the defendant...’

13. Besides the above, the Hon'ble Apex Court in the above Judgement has affirmed that the Court is required to be liberal in its approach while allowing an amendment application but has also stated the amendment cannot be allowed if that amendment changes the nature of the suit, the prayer for amendment is malafide, or by the amendment, the other side loses a valid defence. In the present case the petitioner has filed the suit in the year 2018, the proposed amendment was filed only after the defendants has filed a written statement taking a defense that 2nd respondent did not execute the subject Promissory Notes, especially on the dates alleged. Hence the proposed amendment is not bonafide in nature and the same is liable to be dismissed.

14. It is important to note that totally there are two suits, one filed by the petitioner and the other filed by one Rupa Srikanth in O.S.No.2070 of 2018, against the defendants for realization of money and according to the



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petitioner, the amendment of plaint was sought in both the suits, the trial court, in O.S. No. 2070 of 2018, has allowed the amendment, whereas, in the present suit the same was dismissed. On a perusal of records, it is evident that the said suit preferred by the said Rupa Srikanth was dismissed by the learned XVII Assistant Judge, City Civil Court, Chennai for non-prosecution on 29.09.2021, therefore, the contentions of the petitioner that earlier in the suit filed by the said Rupa Srikanth, the amendment was ordered, cannot be accepted.

15. In view of the above, this Court is of the view that there is no simple mistake as such and hence the order passed in I.A.No.1 of 2019 in O.S.No.2069 of 2018 dated 16.12.2019 does not require any interference by this Court and the present Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
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V.BHAVANI SUBBAROYAN, J.,

ssd

To

1. M/s Jeevandas Laljee & Son
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Chennai – 600 004
2. The XIV Assistant Judge,
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