



CRP.No.598 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 09.06.2023

Delivered On : .03.2024

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

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and

C.M.P.No.5164 of 2021

1. M/s. TIPSTECH Pvt Limited
Rep. By its Managing Director,
Having its registered Office at
S.F. No.361-1A3, Karuvallur Road,
MGC Palayam,
Coimbatore – 641 107. ...1st Applicant/1st Plaintiff/1st Petitioner
2. Ashok Kumar,
Chairman ...2nd Applicant/2nd Plaintiff/2nd Petitioner
3. S.Narayanan
Managing Director ...3rd Applicant/3rd Plaintiff/3rd Petitioner
4. Mr.A.Chockalingam
Director ...4th Applicant/4th Plaintiff/4th Petitioner
5. M/s. TIPS GLOBAL INSTITUTE
Rep. By its Managing Director,
Having its registered Office at
S.F. No.361-1A3, Karuvallur Road,
MGC Palayam,
Coimbatore – 641 107. ...5th Applicant/5th Plaintiff/5th Petitioner

Vs.



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1. Shanthi Anand Kumar ...1st Respondent/1st Defendant/1st Respondent

2. Anand Kumar ...2nd Respondent/2nd Defendant/2nd Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the Judgment and Decree dated 28.10.2020 passed by the I Additional District Court, Coimbatore in I.A.No.2 of 2019 in O.S.No.219 of 2017 and consequently allow the Petition to amend the Plaint in I.A.No.2 of 2019 in O.S.No.219 of 2017 on the file of the I Additional District Court, Coimbatore.

For Petitioners : Mr.Subang.P.Nair
for Mr.K.M.D.Muhilan

For Respondents : Mr.V.Raghavachari
Senior Counsel for Ms.B.S.Mitranesha

ORDER

This Petition has been filed to set aside the Judgment and Decree passed by the learned I Additional District Judge, Coimbatore in I.A.No.2 of 2019 in O.S.No.219 of 2017 dated 28.10.2020 and consequently allow the Petition to amend the Plaint in I.A.No.2 of 2019 in O.S.No.219 of 2017 on the file of the learned I Additional District Judge, Coimbatore.



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2. The brief facts, which are relevant to decide this Civil Revision Case, are as follows:

2.1.The Plaintiffs in O.S.No.219/2017 had filed the Suit for specific performance of agreement to sell the property against the Defendants. In the written statement, the Defendants had claimed that the Suit itself had become infructuous since the property was sold in public auction by the Bank.

2.2.The Defendants had also filed a Petition to reject the Plaint which was dismissed by the learned District Judge, against which the Defendants had filed C.R.P.No.2542/2018. In the meanwhile, the Plaintiffs had filed this Petition seeking alternative relief of compensation against the Defendants. Therefore, the Plaintiffs had filed I.A.No.2 of 2019 to amend the pleadings thereby seeking alternative relief of compensation. After due enquiry, the learned first Additional District Judge, Coimbatore, by order dated 28.10.2020, dismissed the Petition filed under Order VI Rule 17 of Civil Procedure Code seeking to amend the pleadings viz., I.A.No.2 of 2019



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in O.S.No.219 of 2017. Aggrieved by the same, the Plaintiffs in O.S.No.219/2017 on the file of the first Additional District Judge, Coimbatore, had preferred this Civil Revision Petition seeking to set aside the Order of dismissal.

3.The learned First Additional District Judge, Coimbatore had dismissed the Petition in I.A.No.2 of 2019 in O.S.No.219 of 2017 on the ground that the pleadings sought to be amended by the Plaintiffs cannot be permitted after filing of written statement which would deprive the valuable defence available to the Defendants. Therefore, the Petition was dismissed. Aggrieved by the same, the Plaintiffs in O.S.No.219 of 2017, the Petitioners in I.A.No.2 of 2019 had preferred this Civil Revision Petition seeking to set aside the Order of dismissal of the learned First Additional District Judge, Coimbatore.

4.The learned Counsel for the Revision Petitioners submitted that this Civil Revision Petition had been filed by the Plaintiffs against the Order of dismissal of the interim application seeking amendment of the Plaint. The learned I Additional District Judge, Coimbatore, dismissed the I.A.No.2 of



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2019 in O.S.No.219 of 2017 by Order dated 28.10.2020. Earlier there was a Civil Revision Petition filed by the Defendants which was pending before this High Court. The learned Judge had stated that pending Civil Revision Petition, amendment could not be entertained. That Civil Revision Petition was dismissed and also the learned Counsel for the Petitioners submitted that other reasons stated for dismissing the amendment Petition that they are introducing a new cause of action also cannot be accepted. The learned Counsel for the Revision Petitioners by relying upon the ruling reported in *(2006) 4 SCC 385* in the case of ***Rajesh Kumar Aggarwal and Others Vs. K.K.Modi and others***, seeks to allow this Civil Revision Petition.

5.The learned Counsel for the Respondents submitted that the Order passed by the learned I Additional District Judge, Coimbatore, is a well-reasoned Order. Originally, the Suit was filed for relief of specific performance of contract. The Defendants had filed written statement clearly stating that the Plaintiffs are five in numbers. The first Plaintiff had purchased the property in public auction when the property was brought to sell in public auction under the SARFAESI Act by the Bank. Therefore, the Plaintiffs cannot be permitted to claim specific performance of contract



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against the Defendants. Also, the Defendants had filed Petition under Order VII, Rule 11 of Civil Procedure Code seeking to reject the Plaint which was dismissed by the learned I Additional District Judge, Coimbatore. Aggrieved by the same, the Defendants had preferred C.R.P.No.2542/2018. When that Civil Revision Petition was pending, the Plaintiffs had filed I.A.No.2 of 2019 in O.S.No.219 of 2017 seeking to amend the Plaint and the Pleadings. If the pleadings are amended, it gives a fresh cause of action and new cases pleaded by the Plaintiffs which would deprive the valuable defence available to the Defendants in the written statement. In support of his submission, the learned Counsel for the Defendants relied on the following rulings:

(i) **1998 (II) CTC 94** in the case of **N.Srinivasan Vs. Muthammal**

this Court has observed as follows:

“7.Mr.V.Raghavachari, appearing for the petitioner contends that the failure to plead forgery in the original written statement was only due to mistake and that since the defendant had seen the promissory note only at the time of tendering the evidence as D.W.1, he came to know that the suit promissory note had been forged. He would also further plead that even if the pleadings by the defendant in the additional written statement have to be held as contradictory to the earlier stand taken in the original written statement there was no bar for the defendant to set up such a pleading in the additional written statement. Learned counsel for the petitioner relies on a judgment of Thangamani, J. reported in, [Natarajan v. Lakshmi Ammal and another](#), 1994 TLNJ 96. Reliance is made on the



observation by the learned Judge that the Court may allow either party to alter or amend the pleadings at any stage of the proceedings in order to determine the real controversy between the parties and it cannot be refused merely on account of a delay.

8. Learned counsel for the petitioner also relies on the judgment of K.Venkataswami, J. as he then was, reported in 1990 TLNJ 283. Learned counsel relies on the observation of the learned Judge that the general rule regarding the amendment of pleadings was that it shall be granted so as to enable the real question in issue between the parties to be raised on the pleadings particularly when the amendment will cause no injury to the opposite party. In the said case, leave to additional written statement was refused primarily on the ground that if the same was granted, it will take away the right already vested in the plaintiffs in the shape of admission in the written statement filed by the petitioners therein. Learned Judge after considering the views of the earlier rulings, relied on the observations in 81 LW, 15 as applicable to the facts of the case before the learned Judge. An extract in [the said judgment](#) was also relied on by the learned Judge wherein reference was made to a judgment of a Division Bench of this Court in Subramania Iyer v. Hitchcock, wherein it was held that the principles relating to the disposal of an application for amendment of a written statement raising a plea inconsistent with an earlier admission in the original written statement was made by mistake and that in such a case the Court should be liberal in allowing the amendment. But where there was a reason to think that the earlier admission was not made by mistake and that the defendant deliberately changes his mind later, he should not be allowed to amend. On the basis of the above said rulings, Mr.Raghavachari contends that the objections raised by the plaintiff in the present case on the ground of delay as well as that the proposed amendment was contradictory to the stand taken in the original statement, cannot hold good and that the proposed amendment should be allowed.

12. It is also to be noted that there is absolutely no bonafides on the part of the defendant to have come forward with a belated petition for amendment even though he pleads that he had seen the promissory note only when he was in the witness box. Such a plea cannot be accepted having regard to the clear stand taken by him in



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the original statement. As stated earlier, in the original written statement he has specifically pleaded that the month as found in the promissory note had been corrected, that he had executed the promissory note only in the month of January, 1992 and not in November, 1992. Such a pleading could not have been made without having seen the suit promissory note and therefore, the contention that the defendant had seen the suit promissory note only when he was in the witness box cannot be accepted and has to be held as false. It is also pertinent to note that in this case the plaintiff after examining herself as P.W.1 has closed her case and in the midst of examining himself as D.W.1 the defendant has come forward with the present petition for amendment of the written statement. In a decision reported in, [Murthi Gounder v. Karuppanna Gounder](#), AIR 1976 Mad. 302, C.J.R.Paul, J. had occasion to consider the effect of filing belated additional written statement and considering the stage of which the application was filed, learned Judge has held that undoubtedly prejudice would be caused to the plaintiff necessitating the filing a reply statement and framing of fresh and different issues for consideration.

13. Therefore, viewed from any angle the attempt on the part of the defendant/petitioner to amend the written statement and to file the additional written statement cannot be countenanced.”

(ii) (1966) 1 SCR 796 in the case of **A.K.Gupta & Sons Ltd., Vs.**

Damodar Valley Corporation the Hon'ble Supreme Court has observed as under:

“23.Learned counsel for the appellant has contended that there exists such special circumstances in the case which would have justified, in the interests of justice, the grant of the application for amendment of the plaint and, in the alternative, contended that the High Court should not have allowed the respondent to object to the maintainability of the suit on the basis of the proviso to s. 42 of the Act and if the Court had allowed such an objection it should have, as a matter of course, allowed the application for amendment.

38.I may now consider whether the fact,% of the present case



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are such as would justify the amendment of the plaint sought by the plaintiff-appellant. The plaint in the present case gives no facts which are necessary to establish before the plaintiff can get a decree for Rs. 65,000 or which may justify a decree for accounting. The schedule attached to the tender, Annexure A, shows that different rates of payment were agreed upon different basic, as unit of calculation for different type of work. The plaint nowhere B indicates the amount of work done under each category and unless the plaintiff sets out the amount of work done he cannot certainly make out any claim for payment to him. It is said that the amount due to the plaintiff can be worked out on accounting on the basis of the bills tendered by him and to which the defendant had not raised any objection. No reference to such bills has been made in the plaint. Nothing is said in the plaint that the defendant had agreed to the bills tendered. To allow the amendment of the plaint would necessarily lead to a further request for the furnishing of these details about the work done and that would necessarily lead to the defendants being afforded an opportunity to put in a further written statement in connection with the fresh facts which would come on the record. In fact the amendment sought would necessitate practically a de novo trial on the question as to what amount the plaintiff is entitled from the defendant on account of the work done. The amended claim cannot be decreed on the facts on the record.

39. When the plaintiff cannot get the relief, sought to be added as a result of the amendment on the facts mentioned in the plaint originally, it is clear that the cause of action for a decree for Rs. 65,000 is different from the cause of action on which the suit for declaration was founded. For the suit as originally instituted the plaintiff had merely to prove the terms of the contract between the parties and to show that his interpretation of these terms was the correct one and that interpretation justified the declaration sought. A suit based on one cause of action cannot be allowed to be changed into a suit based on another cause of action.”

Point for consideration:



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Whether the Order passed by the learned I Additional District Judge, Coimbatore in I.A.No.2 of 2019 in O.S.No.219 of 2017 dated 28.10.2020 is to be set aside as perverse?

6.Heard the learned Counsel for the Petitioners and the learned Counsel for the Respondents.

7.The Defendants in the Suit in O.S.No.219 of 2017 filed Petition under Order VII, Rule 11 of Civil Procedure Code in I.A.No.477 of 2017 in O.S.No.219 of 2017 to reject the Plaint in O.S.No.219 of 2017. After hearing the arguments of the learned Counsel for the Petitioners /Defendants and Respondents/Plaintiffs, the learned I Additional District Judge, Coimbatore had dismissed I.A.No.477 of 2017 in O.S.No.219 of 2017 by Order dated 07.11.2017. Aggrieved by the same, the Defendants in the Suit, the Petitioners in I.A.No.477 of 2017 had preferred CRP.No.2542 of 2018 under Article 227 of Constitution of India seeking to set aside the Order of dismissal dated 07.11.2017 in I.A.No.477 of 2017 in O.S.No.219 of 2017.

8.This Civil Revision Petition had been filed by the Plaintiff who



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had filed Petition under Order VI, Rule 17 of CPC r/w. Section 12 of Specific Relief Act, 1963 and Section 151 CPC seeking to amend the Plaint in O.S.No.219/2017. The Defendants as Respondents in I.A.No.2 of 2019 vehemently raised objection that the attempt of the Plaintiffs to amend the Plaint after filing of the written statement challenging the maintainability of the Suit and after dismissal of the Petition preferred by the Defendants seeking rejection of the Plaint under Order VII, Rule 11 of CPC which was dismissed and against which the Defendants as Petitioners filed Revision Petition in CRP.No.2542 of 2018 was pending before this Court. Therefore, the Defendants as Respondents in I.A.No.2 of 2019 vehemently objected the attempt of the Plaintiffs to amend the Plaint on the ground that valuable defence of the Defendants stated in the written statement will be lost if the Plaintiffs in the Suit is permitted to amend the Plaint.

9.After hearing the argument of the learned Counsel for the Plaintiffs and the learned Counsel for the Defendants, the learned First Additional District Judge, Coimbatore by an Order dated 28.10.2020 dismissed the Petition in I.A.No.2 of 2019 in O.S.No.219 of 2017 on the ground that before disposal of the Civil Revision Petition by this Court in



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CRP.No.2542/2018 preferred by the Defendants, the Plaintiffs cannot seek amendment in the Plaint. Also, the proposed amendment is found to be a different cause of action which would defeat the valuable defence of the Defendants stated in the written statement filed by the Defendants in O.S.No.219 of 2017. Therefore, the Petition in I.A.No.2 of 2019 under Order VI, Rule 17 of Civil Procedure Code filed by the Plaintiffs was dismissed. Aggrieved by the same, the Plaintiffs in O.S.No.219 of 2017, Petitioners in I.A.No.2 of 2019 had preferred this Civil Revision Petition.

10.By the time the Civil Revision Petition came up for hearing, on an earlier occasion, it was represented that the connected CRP.No.No.2542/2018 is also pending. Therefore, the same was posted before the Hon'ble Chief Justice for appropriate Orders. By the time, the note was placed, CRP.No.2542/2018 was disposed of by the learned Judge of this Court, by an Order dated 07.07.2021 confirming the dismissal of the learned First Additional District Judge, Coimbatore in I.A.No.477 of 2017 in O.S.No.219 of 2017.

11.As per the reported ruling relied on by the learned Counsel for the



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Petitioners in **(2006) 4 SCC 385** in the case of **Rajesh Kumar Aggarwal and Others Vs. K.K.Modi and others**, amendment to the Plaint had to be allowed leniently to decide the real question in controversy between the parties, provided it does not cause injustice or prejudice to the other side. In this case, it clearly provides prejudice to the Defendants in the case as Defendants in the written statement had clearly stated that as on the date of filing of the Suit, the Suit itself is not maintainable. Only after the averments in the written statement was considered by the Plaintiffs, the Plaintiffs had come forwarded by seeking to amend the pleadings in the Plaint itself. Therefore, it cannot be permitted as per the same ruling which was relied by the learned Counsel for the Petitioners. The Plaintiffs were apprehensive with the CRP.No.2542 of 2018 preferred by the Defendants could have been allowed by this Court thereby accepting the contentions raised by the Defendants in I.A.No.477 of 2017 seeking to reject the Plaint. After hearing the arguments, Civil Revision Petition itself was dismissed. Still the averments in the written statement filed by the Defendants questioning the maintainability of the Suit itself is to be put to test only during trial in the Suit. Before commencement of trial, the Plaintiffs had sought to amend the Plaint thereby causing prejudice to the Defendants in



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the Suit. That is why, the Defendants as Respondents in I.A.No.2 of 2019 had resisted the same which was also accepted by the learned I Additional District Judge thereby dismissing the Petition seeking to amend the Plaint. As per the reported ruling cited by the learned Counsel for the Respondents/Defendants in *1998 (II) CTC 94* in the case of *N.Srinivasan vs. Muthammal; (1966) 1 SCR 796 : AIR 1967 SC 96* in the case of *A.K.Gupta vs. Damodar Valley Corporation* it was a similar case, the High Court did not allow the amendment of Plaint against which the Plaintiffs had preferred the Appeal before the Hon'ble Supreme Court. In the facts of the case, the Plaintiffs had filed the Suit for recovery of money based on contract. The Defendants in the written statement challenged the maintainability of the Suit on the ground that the interpretation of contract clause between the Plaintiffs and the Defendants in that Suit did not dispute any material facts. The written statement also stated that the Defendants was ever ready and willing and is still ready and willing to pay the legitimate due to the Plaintiff. One of the issues before the trial Court was maintainability of the suit in the form in which it had been framed. The other issue is that proper interpretation of the Clause of the Contract. The Plaintiffs had sought to amend the Plaint by adding extra relief for



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Rs.65,000/- or such other amount, which may be found due on proper account being taken, by the time, amendment was sought. The claim was barred by limitation. Therefore, High Court did not allow the amendment. On consideration of the fact, the Hon'ble Supreme Court dismissed the Appeal and confirmed the finding of the High Court. Here also the Defendants had in the written statement clearly challenged the maintainability of the Suit. Only after taking notice of the averments in the written statement, the Plaintiffs had come forward seeking amendment thereby creating a new cause of action which will prejudice the contents of the written statement already stated by the Defendants. Therefore, by any account, the Plaintiffs cannot be permitted to amend the Plaint which will cause prejudice to the valuable defence of the Defendants in the Suit.

12.As per the reported ruling relied on by the learned Counsel for the Respondents in *1998 (II) CTC 94* in the case of *N.Srinivasan vs. Muthammal*, the Defendant sought to amend the pleading by filing additional written statement which was not allowed by the trial Court on the ground that the party to the proceedings cannot be permitted to put forth inconsistent or alternative plea causing prejudice to the Plaintiff and



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depriving the benefit of statutory presumption. In this case, before this Court, it is the Plaintiffs who had sought to amend the Plaint by the same ratio as laid by this Court in **1998 (II) CTC 94** in the case of **N.Srinivasan vs. Muthammal** making inconsistent plea cannot be permitted which will cause prejudice to the Defendants clearly the amendment sought by the Plaintiffs before the trial Court in O.S.No.219 of 2017 is only as a inconsistent plea or alternative plea instead of original plea seeking specific relief against the Defendants which was clearly denied in the written statement stating that the Suit for specific performance as framed by the Plaintiffs is not maintainable as on the date of filing of the Suit. This plea of the Defendants in the written statement is now sought to be defeated by the Plaintiffs by seeking relief. Therefore, the learned I Additional District Judge had rightly dismissed the contention of the learned Counsel for the Plaintiffs as Petitioners in I.A.No.2 of 2019 in O.S.No.219 of 2017. The Order passed by the learned I Additional District Judge cannot be found fault. It is a well-reasoned Order, it does not warrant any interference by this Court under Article 227 of Constitution of India.

13.In the light of the above discussions, point for consideration is



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answered in favour of the Respondents and against the Petitioners. The Judgment passed by the learned I Additional District Judge, Coimbatore in I.A.No.2 of 2019 in O.S.No.219 of 2017 dated 28.10.2020 is found proper.

In the result, **this Civil Revision Petition is dismissed.** The Judgment and Decree passed by the learned I Additional District Judge, Coimbatore in I.A.No.2 of 2019 in O.S.No.219 of 2017 dated 28.10.2020 is confirmed. Consequently, connected Miscellaneous Petition is closed. No costs.

.02.2024

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The I Additional District Judge,
Coimbatore.

2. Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

dh

Pre-delivery Order made in
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