



CRP No.405 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.405 of 2024 and
CMP No.1949 of 2024

Kakinada Institute of Engineering and Technology,
Kakinada, rep. by its Chairman,
Shri Pothula Venkata Viswam,
Koringa, Tallarevu Mandalam,
East Godavari District, Andhra Pradesh

... Petitioner

Vs.

M/s Bhagyalakshmi Wood Industries,
rep. by its Proprietor,
Ch V.V.S.Ramalingeswara Rao,
s/o Krishna Murthy, Floor Bank Road Mettacur,
Yanam,

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India to set aside the order, dated 02.11.2023 passed by the
learned Subordinate Judge, Yanam in I.A.No.38/2022 in O.S.No.50/2018.



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For Petitioner : Mr.S.Rajeni Ramadass

ORDER

This Civil Revision Petition has been filed to set aside the order dated 02.11.2023 passed by the learned Subordinate Judge, Yanam in I.A.No.38/2022 in O.S.No.50/2018.

2. The brief facts leading to the filing of Civil Revision petition is as follows:

The petitioner herein is the defendant in O.S.No.50/2018 on the file of Subordinate Judge, Yanam and the respondent herein/plaintiff has filed the above said suit to pass a decree against the defendant personally and from his personal and joint family properties for recovery of the amount of Rs.4,89,326/- by awarding subsequent interest at contract rate. In the above suit, evidence of both parties were recorded and documents were marked. Subsequently, the respondent/plaintiff has filed an application in I.A.No.38/2022 to make amendment in the prayer at paragraph No.13 of the



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plaint as follows:

" by substituting the sentence "*institute and properties of the institute*" in the place of " personally and from his personal and joint family properties" viz., after the sentence " a decree in favour of plaintiff against the defendant.

The above petition was allowed by the Trial Court and the challenging the same, the present civil revision petition has been filed.

3. Heard the learned counsel for the petitioner and I have perused the materials on record.

4. The petitioner is the defendant in O.S.No.50/2018 and the respondent has filed the above suit, with the following prayer.

" The plaintiff therefore prays that the Hon'ble Court may be pleased to pass a decree in favour of the plaintiff against the defendant personally and from his personal and joint family properties for the recovery of the suit amount of Rs.4,89,26/- awarding subsequent interest at contract rate and award costs."



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A perusal of the records reveals that, in the above suit, on the side of the plaintiff, one witness was examined as PW1 and Ex.A1 to Ex.A15 have been marked and despite opportunities were granted, PW1 was not cross examined by the defendant and subsequently, the suit was posted for arguments. It is the contention of the respondent/plaintiff before the Trial Court that, at the time of preparing notes for arguments, it was noticed that, though the suit has been filed as against the defendant Institute, the plaintiff has sought personal decree against its chairman, instead of the defendant institute. Further, it is contended by the respondent/plaintiff that the above mistake was occurred due to accidental and not wilful. Therefore, the respondent/plaintiff has filed I.A.No.38/2022 to amend the prayer of the plaint, as stated supra and the same was allowed by the Trial Court, vide order dated 02.11.2023.

5. The learned counsel for the petitioner submitted that after commencement of Trial, no amendment is permissible. She further



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submitted that, now, the prayer sought for in the suit, as against the defendant Institute is barred by limitation and hence, the order passed by the Trial Court is liable to be set aside.

6. Admittedly, the suit itself was filed by the respondent/plaintiff against the institute, namely " M/s Kakinada Institute of Engineering and Technology, Kakinada, rep. by its Chairman, Sri Pothula Venkata Viswam, Koringa, Tallareveu Mandal, East Godavari District, Andhra Pradesh" and not against the individual person. However, in the prayer, the respondent/plaintiff sought decree as against the defendant personally and from his personal and joint family properties for recovery of amount. Therefore, when the suit itself has been filed against an Institute; and when a mistake has occurred by seeking decree as against the individual person viz., Chairman of the institute, the prayer of amendment has to be allowed at any stage, in the interest of justice, as per the decision of the Hon'ble Supreme Court reported in AIR 1974 SC 1126. Therefore, I do not find any infirmity in the orders passed by the learned Trial Judge, and hence, the



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civil revision petition is liable to be dismissed as it has no merits.

7. In fine, the civil revision petition is dismissed and the impugned order passed by the Trial Court is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Internet: Yes/No
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To

1. The Subordinate Judge, Yanam.



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V.SIVAGNANAM, J.,

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