



C.R.P.(PD) No.5171 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2025

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD) No.5171 of 2024
& C.M.P.Nos.28959 & 27979 of 2024

Krishnamurthy Vijayakumar
Son of Krishnamurthy, Proprietor,
M/s.VJH Cinema Vision,
No.65, Santhome High Road,
Chennai-600 004.

.. Petitioner

Versus

1. K.S.Srinivasan, Producer,
M/s.Vasan Vishal Ventures,
New No.10, 92nd Street,
18th Avenue, Ashok Nagar,
Chennai-600 083.

2. M/s.Genini Labs,
No.28, New Bangaru Colony
West K.K.Nagar,
Chennai-600 078.

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 08.11.2024 in I.A.No.2 of 2024 in C.O.S.No.221 of 2023 on the file of the learned Principal Commercial Court Judge, Egmore, Chennai.



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For Petitioner : Mr.S.Abdul Mussawwir

For Respondents : Mr.K.Harishankar for
Mr.C.Ramesh

ORDER

This civil revision petition challenges the order passed by the learned Principal Commercial Court at Egmore in I.A.No.2 of 2024 in COS No.221 of 2023 dated 08.11.2024.

2. The plaintiff is the civil revision petitioner. COS.No.221 of 2023 was originally presented as C.S.No.321 of 2014. The relief sought for in the suit is as follows:

“a) For permanent injunction restraining the Defendants, his men and agents from releasing the Telugu version of the film “Nimirndhu Nil” titled as “Jandapai Kapiraju” starring Nani, Amala Paul and others in any part of the word without liquidating the compensative sum of Rs.57,00,00/- to the plaintiff;”



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3. The case of the plaintiff is that he had entered into an agreement with the first defendant on 13.09.2012 for distribution and exhibition of a Tamil film “Nimirnthu Nil” in foreign territories. He alleges that the first defendant has stated that the movie would be released on 07.03.2014, but the movie was not released on that date. It was released on 09.03.2014. On account of the delay in release, he had suffered damages to the tune of Rs.57,00,000/-. Hence, he came forward with the suit pleading that the first defendant should not release its next production titled “Jandapai Kapiraju” without liquidating the amount of Rs.57,00,000/-. The suit was originally presented before the original side of this Court in 2014. Due to enhancement of pecuniary jurisdiction, the suit was transferred to the file of the XXIII Additional City Civil Court at Chennai and re-numbered as O.S.No.2232 of 2020.

4. The written statement filed by the first defendant disputed the allegations made in the plaint. The plea of the first defendant, *inter alia*, is that the plaintiff was not put to any loss on account of the alleged delay in release of the movie and that there is no material to substantiate the claim of



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a sum of Rs.57,00,000/- as damages. He added that the plaintiff has no legitimate or legal claim against the Telugu film “Jandapai Kapiraju” and therefore, the issue of granting an order of injunction restraining its release does not arise.

5. On the basis of these pleadings, issues were framed. Subsequently, with the creation of Commercial Court at Egmore, the suit was transferred to the file of that Court. It was re-numbered as COS No.221 of 2023.

6. On transfer, the plaintiff filed an application seeking amendment of the prayer portion of the plaint alone. The relief of permanent injunction was modified to the following relief:

“a 1) directing the defendants jointly and severally to pay sum of Rs.57,00,000/- along with 18% rate of interest from the date of the suit till the realization of the same.”

This application was numbered as I.A.No.2 of 2024. A counter affidavit was presented by the first defendant. He stated that trial had commenced in the suit and it is at the stage of cross-examination of PW1. It was pointed out



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that due diligence has not been exhibited by the plaintiff. It was further added that the relief for damages had not been reserved in terms of Order II Rule 2 of the Code of Civil Procedure. It was also pointed out that the Telugu movie 'Jandapai Kapi Raju' had already been released several years ago and the amended prayer is time barred one. It was construed by the defendant that the plaintiff is seeking for an additional relief claiming compensation which was without any basis and therefore, the first defendant sought dismissal of the application.

7. The learned trial Judge took up the petition for enquiry. She came to a conclusion that the claim is time barred and therefore, the same cannot be permitted. Aggrieved by the same, the present civil revision petition.

8. I heard Mr.Abdul Mussawwir in support of the revision petitioner. Mr.K.Harishankar for Mr.C.Ramesh appeared for the respondents.

9. Mr.Abdul Mussawwir, inviting the attention of the Court to paragraph-34 of the plaint, points out that even when the plaint was



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presented, the plaintiff had not valued the suit merely for injunction, but had treated it as a money claim and had paid a sum of Rs.60,525/- as court fees.

This amount of Rs.60,525/- corresponds to the money claim, if the relief had been for recovery of money of Rs.57,00,000/-. Relying upon the judgment of the Supreme Court in ***Life Insurance Corporation of India v. Sanjeev Builders Private Limited, [2022 16 SCC Page 1]***, in particular paragraph 71, he urges that the plaintiff has not introduced any time barred cause of action but is merely amending the prayer portion alone. Hence, he seeks the revision to be allowed and leave to be granted to amend the plaint.

10. Per contra, Mr.Harishankar points out that the amendment application lacks due diligence and therefore, the application is barred under the proviso of Order VI Rule 17 of the Code of Civil Procedure. He states that the amendment is time barred. He urges that the Telugu movie 'Jandapai Kapi Raju' had been released in the year 2015 and if the amendment is granted today, it will be reviving a time barred claim. Hence, he urges that the revision be dismissed.



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11. I have carefully considered the submissions of both sides.

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12. The facts are not in dispute. The overseas right of the movie 'Nimirnthu Nil' had admittedly been assigned in favour of the plaintiff. The plaintiff pleads that there was a delay in releasing the movie. On account of the delay, he states that he has suffered damages to the tune of Rs.57,00,000/-. Whether the damages are actually payable or not is the matter which the learned trial Court will have to decide after evidence is recorded. The point remains that when the suit was presented before this Court in its avatar as C.S.No.321 of 2014, the Telugu movie "Jandapai Kapi Raju" had not yet been released. Pending the proceedings, the movie had also been released. Therefore, the prayer originally sought for in the suit has worked itself out. The reading of the plaint shows that the plaintiff had sought for injunctive relief since he claimed he is entitled to damages. As pointed out by Mr.Abdul Mussawwir, the court fee that has been paid is also one for damages. At the time of drafting, instead of seeking prayer for damages, the relief of permanent injunction alone had been sought for.



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13. Turning to the first point of Mr.Harishankar, that the proviso to Order VI Rule 17 bars the amendment, I have to point out that the bar under the said proviso is not an absolute one. In terms of the proviso, the power of the Court to grant an amendment liberally has been restricted, but it has not been taken away. In fact, the Code being one of fairness, in order to ensure that the litigating parties are placed on an even bed, to grant amendments, has not been taken away but restricted. This is to ensure that a Court is able to render a just verdict in the dispute that has been presented to it. Prior to allowing the application, the proviso demands that the Court must ensure that the party could not have raised the matter before the commencement of the trial. This implies that new pleadings cannot be introduced, if they could have already been taken, at an earlier stage. A perusal of the amendment application shows that the plaint is not touching on any of the averments that have made in the plaint but is only seeking to amend the relief portion alone.

14. In terms of Order VII Rule 7 of the Code, if the plaintiff is able to prove that he has suffered damages, then the Court can award damages



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though such a relief was not specifically prayed for. The Court under Section 40 of the Specific Relief Act is also empowered to grant the relief of damages in lieu of granting the relief of injunction. Hence, the power is always available with the Court. By seeking for specific prayer, the plaintiff is only reminding the Court of the duty imposed under Section 40 of the Specific Relief Act. Had the plaintiff today sought for any amendment in the averments in the plaint or introduced new pleas regarding damages, certainly I would have applied the proviso and rejected the plaint. In the light of Section 40 of the Specific Relief Act, when the power is available with the Court, I have to ask myself the question whether the Court is barred from granting the amendment with respect to the prayer seeking for relief in money terms. My answer is 'No'.

15. Instantly, I have to refer to the judgment of this Court in ***G.Subashini and Another v. P.Lakshmi Bai, [(1987) 100 LW 489]***. M.Srinivasan J. (as he then was) held that a party places all the facts before a counsel and it is the counsel who drafts the relief in the suit. Drafting of the prayer in the plaint is beyond the power of the plaintiff. In this case, as it



is clear, all the averments necessary for the purpose of making the claim for damages, had been informed to the counsel. The counsel had also made ready the plaint regarding liquidated damages. He had also collected and paid court fees on liquidated damages. However, when it came to the prayer portion instead of seeking for damages, he had sought for injunctive relief. For the mistake in poor drafting, the cross need not be borne by the plaintiff.

16. To reiterate if the power was not available to the Court or it was a new claim, I would have certainly rejected it. In this regard, I would refer to the judgment that has been cited by Mr.Mussawwir in ***Life Insurance Corporation v. Sanjeev Builders***, wherein the Supreme Court in paragraph 71.7 held that where the amendment merely seeks to introduce a new or additional approach to a cause of action, then the amendment is liable to be allowed, even after the expiry of the period of limitation.

17. As found supra, all the averments for damages already exists and instead of seeking injunctive relief, a new approach to the pleadings already existing, is being taken by the plaintiff. Hence, in view of the judgment of



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the Supreme Court, I cannot reject the application outright as barred by time.

18. Apart from the above, in the judgment of the Hon'ble Supreme Court in ***L.J.Leach & Co. Ltd. & Another v. Jardine Skinner & Co., AIR 1957 SC 357***, 4 Judges of that Court have held that the plea of limitation is only a factor to be considered by the Court at the time of considering an application for amendment. If the circumstances so exist, then the amendment should be allowed. The fact that a *prima facie*, conclusion has been arrived that it is barred by limitation should not desist the Court from allowing the said application.

19. In any event, if the defendants were to file a written statement that the prayer as it stands post amendment is barred by time, I am sure the learned trial Judge will frame an issue and answer it accordingly.

20. Hence, in the light of the above discussion, the order of the learned trial Judge requires to be set aside. Accordingly, it is set aside.



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I.A.No.2 of 2024 will stand allowed. Liberty is granted to the plaintiff to amend the relief part of the plaint alone. As there has been delay in moving the application, the plaintiff will have to pay a sum of Rs.25,000/- to the first defendant. The costs shall be paid within a period of **four weeks** from today (30.01.2025). In case, the costs is not not paid, the benefit granted under this revision shall not inure to the plaintiff. If the cost is paid, the learned Judge shall ensure that the plaintiff presents the amended plaint copy by 06.03.2025. The first defendant is granted two weeks to file an amended written statement to the amended plaint i.e, by 20.03.2025. Since only the prayer portion is amended, the plaintiff will not be entitled to let in any fresh evidence. The trial Judge is requested to dispose of the suit by 30.04.2025.

21. The civil revision petition is allowed on the above directions.

Consequently, connected miscellaneous petitions are closed.

30.01.2025

Index : Yes/No
Internet : Yes/No
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Speaking/
Non-speaking Order : Yes/No



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To
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The Principal Commercial Court Judge,
Egmore, Chennai.



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V.LAKSHMINARAYANAN, J.

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