

**HIGH COURT OF ANDHRA PRADESH**  
**FRIDAY, THE TWENTY FIFTH DAY OF JANUARY**  
**TWO THOUSAND AND NINETEEN**

**PRESENT**

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRP No. 5281 OF 2018**



Petition under Article 227 of the Constitution of India against the Order and Decree dated 06-08-2018, passed in I.A. No.702 of 2018 in O.S.No.139 of 2012, on the file of Principal Junior Civil Judge, Adoni.

**Between:**

1. M. Md. Zakria, S/o.M.Allabaksh
2. M. Abdullah, S/o.M. Allabaksh

**PETITIONERS/PLAINTIFFS**

**AND**

1. Shaikh Khan Mohammed Idrus, S/o.Shaikh Khan Md.Ibrahim Age 40 years, R/o.2/289/A, Bharpet, Adoni, Kurnool District.
2. Shaikh Khan Mohammed Ilyas, S/o.Shaikh Khan Md.Ibrahim Age 38 years, R/o.2/289/A, Bharpet, Adoni, Kurnool District.

**RESPONDENT/DEFENDANTS**

**IA NO: 1 OF 2018**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay of all further proceedings in O.S No.139 of 2012 on the file of the Principal Junior Civil Judge, Adoni.

**Counsel for the Petitioner : SRI K. SITA RAM**

**Counsel for the Respondents: SRI NADIPALLY ANANDA RAO**

**The Court made the following: ORDER**

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CIVIL REVISION PETITION No. 5281 OF 2018**

**ORDER:**

This civil revision petition arises out of an order dated 06.08.2018 in I.A.No.702 of 2018 in O.S.No.139 of 2012 passed by the Principal Junior Civil Judge, Adoni, Kurnool District, whereby, I.A.No.702 of 2018 filed under Order VI Rule 17 C.P.C was dismissed.

The petitioners are the plaintiffs in the suit and they filed suit for grant of perpetual injunction, restraining the respondents/defendants, their henchmen from interfering with the plaintiffs possession and enjoyment of the schedule property bearing H.No2/268 in Bharpet, Adoni within the specific boundaries.

The trial has already commenced, P.W.1 was already examined and at this stage, the petitioner filed petition under Order VI Rule 17 C.P.C seeking leave of the Court to delete the words "the suit house" in the prayer portion and to insert the open space shown as EFGH and IJKL abutting to D.No.2/268 in Bharpet, Adoni and to add Item No.1 of Suit Schedule Property which is shown as open space with Kadapa Slabs as EFGH and IJKL in the rough sketch appended to the plaint which is abutting to D.No.2/268 within municipal limits of Adoni.

The Trial Court, on contest, dismissed I.A.No.702 of 2018 on the ground that the petitioner filed earlier application I.A.No.499 of 2013, I.A.No.1621 of 2016 and I.A.No.1062 of 2017 seeking amendment of plaint and those petitions were allowed on 10.08.2016 and 21.04.2017. But, no steps were taken to get the plaint amended appropriately after

commencement of the trial and sought leave of the Court to amend the plaint by invoking Order VI Rule 17 C.P.C.

The present petition under Article 227 of the Constitution of India is filed raising specific grounds that, dismissal of petition filed under Order VI Rule 17 C.P.C is erroneous, since it permits the parties to suit or proceedings to amend the pleadings at any stage. But, the Court below on erroneous appreciation of law dismissed the petition and failed to exercise its discretion that vested on it, committed serious error in dismissing the petitioner, thereby the order impugned is illegal and sought to set-aside the same.

According to Rule 17 Order VI of C.P.C., the Court may at any stage of the proceedings allow either party to alter or amend his/her pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. However, the principles to allowing petitions under Rule 17 Order VI of C.P.C. are well settled. They are; the amendment shall not alter the basic structure or nature of the claim and that the amendment shall not take away the valuable right that accrued to the respondent or such amendment will not take away the unequivocal admissions made in the pleadings. However, by proviso to Rule 17 of Order VI of C.P.C, an interdict is created, according to it, no application for amendment shall be allowed after the trial has been commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial.

The proviso to Rule 17 of Order VI to some extent curtails absolute discretion to allow amendment at any stage. If application is filed after commencement of trial, it has to be shown that in spite of exercise of due diligence, such amendment could not have been sought earlier. The object for adding proviso by virtue of Amendment Act 22 of 2002 to Rule 17 of Order VI was to curtail delay and expedite adjudication of the cases.

As discussed above, when the law permits amendment of pleadings at any stage of the proceedings, even in the first appellate or second appellate stage, the parties can be permitted to amend their pleadings prior to Act XXII of 2012. By amendment to Civil Procedure Code by Act No.XXII of 2002, a proviso is added to Order VI Rule 17 C.P.C, which disabled the parties to seek leave of the Court to amend the plaint as a matter of course and it appears that, the proviso is an exception to the general rule. Therefore, to claim benefit under Order VI Rule 17 C.P.C, the petitioner must establish that, despite exercise of due diligence, she could not bring those facts on record before commencement of trial.

The word "due diligence" is not exactly defined by the Act, but in

**Bharat Petroleum Corporation Ltd. v. Precious Finance Investment Pvt. Ltd**<sup>1</sup>, the Apex Court held as follows:

"The Dictionary meaning of the expression "due diligence" as given in the Blacks Law Dictionary, Sixth Edition, 1990 means "Such a measure of prudence, activity or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case." Similarly the Law Lexicon by P. Ramanatha Aiyer, Second Edition (Reprint) 2001 explains "due diligence" to mean such watchful caution and foresight as the circumstances of

<sup>1</sup> 2006 (6) BomCR 510

the particular case demands. While examining the explanation offered or cause shown as to why in spite of due diligence a party could not have raised the matter before commencement of trial, the Court may have to see the circumstances in which the party is seeking amendment. In short the explanation as to 'due diligence' depends upon the particular circumstances and the relative facts of each case to reach a conclusion one way or the other."

In **J. Samuel v. Gattu Mahesh**<sup>2</sup>, the Supreme Court laid down certain tests as to what is 'due diligence' with reference to Order VI Rule 17 C.P.C and proviso thereto and held as follows:

"13. Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term 'Due diligence' is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial.

14) A party requesting a relief stemming out of a claim is required to exercise due diligence and is a requirement which cannot be dispensed with. The term "due diligence" determines the scope of a party's constructive knowledge, claim and is very critical to the outcome of the suit"

In view of the tests laid down by the Apex Court in the judgments referred supra, the amendment is impermissible when the Trial has commenced, as there is a direct interdict on the powers of the Court to grant leave to this Court after commencement of the trial and as per proviso to Order VI Rule 17 C.P.C, unless the petitioner establishes that the petitioners exercised due diligence and despite exercise of due diligence, they could not bring those facts on record before

<sup>2</sup> 2012 (2) SCC 300

commencement of trial. When the petitioners did not raise such plea in the affidavit filed along with this petition, the question of substantiating the same does not arise and in fact, both the parties went on trial. Filing of earlier two applications in I.A.No.499 of 2013 and I.A.No.1621 of 2016 obtaining orders to amend the plaint without seeking the relief sought for in the petition is itself suffice to conclude that the petitioner failed to exercise due diligence in bringing those facts on record before commencement of trial.

If, the tests laid down in the two judgments referred supra, are applied to the present facts of the case, this petitioners failed to take necessary steps before commencement of trial. Failure to take steps at an earlier stage without exercise of due diligence, disentitled the petitioner to claim such relief. Therefore, on this ground alone, this petition is liable to be dismissed. Consequently, dismissal of I.A.No.702 of 2018 by the Court below cannot be faulted by the Court below and the present civil revision petition is liable to be dismissed.

In the result, the civil revision petition is dismissed, but however, without costs.

Consequently, miscellaneous petitions pending, if any, in this civil revision petition shall also stand dismissed.

//TRUE COPY//

SD/- E. KAMESWARA RAO  
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The Principal Senior Civil Judge, Kovvur, West Godavari District.
2. One CC to Sri K. Sitaram, Advocate (OPUC)
3. One CC to Sri Nadipally Ananda Rao, Advocate (OPUC)
4. Two CD copies.

Tt

HIGH COURT

DATED:25/01/2019

ORDER  
CRP.No.5281 of 2018

Dismissing the CRP

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12/28/2019