

THE HON'BLE SMT JUSTICE LALITHA KANNEGANTI

CIVIL REVISION PETITION No. 374 OF 2017

ORDER:-

The civil revision petition under Article 227 of the Constitution of India is filed aggrieved by the order and decree dated 19.09.2016 passed in I.A.No.654 of 2016 in O.S.No.64 of 2015 by the learned Principal District Judge, Vizianagaram whereby the petition filed under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') seeking amendment of the plaint was dismissed.

2. The petitioner before this Court is the plaintiff in the suit. The parties shall be referred to as they are arrayed in O.S.No.64 of 2015.

3. The brief facts of the case are:

The plaintiff filed the suit against defendant Nos.1 and 2 who are his father and brother respectively for recovery of an amount of Rs.25,08,595/- with future interest at 18% per annum from the date of institution of the suit till realization and for costs. It is the specific case of the plaintiff that he is residing in USA for his job purpose and in the years 2011 to 2014 he sent some amount to the tune of Rs.37,33,399/- to the account of defendant No.2 for purchasing immovable properties in his name. But the defendants purchased the same in the name of defendant No.1 and his wife, instead of purchasing the same in the name of the plaintiff which

were subsequently transferred in the name of defendant No.2. In spite of issuance of legal notice demanding them to return the amounts sent by the plaintiff with interest at 18% the defendants failed to pay the same. Hence, the present suit.

Defendant No.1 filed written statement resisting the averments in the plaint and stated that the properties are purchased from his self earnings and no amounts were sent by the plaintiff for purchasing immovable properties. Further there is no contract between the parties and the defendants never borrowed any amounts from the plaintiff. Hence, prayed to dismiss the suit.

4. When the matter was coming up for cross-examination, the plaintiff filed the above mentioned interlocutory applications for impleading proposed parties and to amend the plaint particularly with regard to the relief portion, by incorporating the relief of declaration of the plaintiff's title to item Nos.1 to 3 of the plaint schedule property and convert the relief of recovery of Rs.25,08,068/- as an alternative relief to the main relief of declaration of the plaintiff's title.

5. The defendants filed their counter resisting the claim of the plaintiff on two grounds. The first one is that the proposed amendments will alter the nature of the suit and cause of action and the second ground is that as the trial has already commenced the plaintiff cannot be allowed to amend the plaint unless it is proved that in spite of his due diligence, he could not raise such contention earlier.

6. The Court below dismissed both the applications holding that the plaintiff failed to give a valid reason that inspite of his due diligence he could not take such a plea before settlement of issues. Aggrieved by the same, the plaintiff is before this Court.

7. Heard Sri N.Siva Reddy, learned counsel for the petitioner/plaintiff. Learned counsel for the plaintiff filed a memo showing that the notices sent to the respondents returned with an endorsement 'refused to receive' and the same is deemed service of notice.

8. Learned counsel for the plaintiff submits that the Court below erred in holding that the cause of action is different for the relief of declaration of title and the relief of recovery of money. He further submits that the amendment sought is only a consequential relief and there is no invention of new facts. Therefore, no prejudice would be caused to the defendants, if the application is allowed.

9. There is no dispute about the fact that the suit is originally filed for recovery of money and it is the specific case of the plaintiff that he has sent money to the defendants for the purpose of purchasing immovable properties in his name but the defendants purchased the properties in the names of defendant No.1 and his wife instead of purchasing the same in the name of the plaintiff. Now the amendment that is sought is to insert the relief of declaration of title of the plaintiff in respect of the said properties.

10. The Court has dismissed the petition on two grounds one is that amendment of prayer from 'recovery of money' to 'declaration of property' will alter the nature of the suit claim and the other is that the plaintiff failed to aver or prove that inspite of his due diligence he could not seek such relief.

11. Before the amendment to Order VI Rule 17 CPC, amendment can be allowed at any stage of the proceedings. However, proviso was added to Order VI Rule 17 by way of Amendment Act, 2002, which reads as under:

“Order VI Rule 17 : Amendment of pleadings :

The Court may at any stage of the proceedings allow either party to alter or amend his 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.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial”.

12. A perusal of the rule manifests that the Court may at any stage of the proceedings allow either party to alter or amend pleadings in such a manner and on such terms as may be just. It also makes it clear that such amendment should be necessary for the purpose of determining the real questions in controversy between the parties. The amended provision stipulates that no application for amendment should be allowed after trial has

commenced unless the Court comes to the conclusion that inspite of due diligence the party could not file the application for which amendment is sought before the commencement of trial. The whole object of the amended provision is that the Court must see the merits of the case that come before it and to consequently allow the amendments that may be necessary for determining the real question in controversy between the parties, provided it should not cause injustice or prejudice to other side.

13. Order VI Rule 17 consists of two parts. First part is discretionary. The second part is imperative and permits the Court to allow all amendments which are necessary for the purpose of determining the real controversy between the parties.

14. In **Kailash vs. Nanhku and Ors.**¹ the Hon'ble Apex Court observed that trial begins only when issues are framed and the case is set down for recording of evidence. All the proceedings before that stage are treated as proceedings preliminary to trial. In respect of amendment under Order VI Rule 17 if the party establishes that inspite of due diligence the party could not have raised the matter before commencement of the trial, the Court is free to order such application.

15. In **Chander Kanta Bansal vs Rajinder Singh Anand**² wherein the Hon'ble Apex Court while observing that The word due diligence has not been defined in C.P.C. held as under:

¹ 2005 (4) SCC 480

² 2008 (5) SCC 117

“if it is established that in spite of "due diligence" the party could not have raised the matter before the commencement of trial depending on the circumstances, the court is free to order such application. The words "due diligence" has not been defined in the Code. According to Oxford Dictionary (Edition 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (Eighth Edition), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edition 13A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs.”

16. In **Sajjan Kumar vs. Ram Kishan**³ the Hon'ble Apex Court held that:

“Having heard the learned counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial Court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial Court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if Section 115 CPC would not have been strictly applicable. It is true that the plaintiff-appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment

³ 2005 (13) SCC 89

was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff-appellant succeeding in the suit.”

17. In **Revajeetu Builders and Developers vs. Narayanaswamy and Sons and Ors.**⁴ the Hon’ble Apex Court had analyzed both the English and Indian cases from which some principles emerged for taking into consideration while allowing or rejecting the application for amendment where are as under:

- (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.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

⁴ 2009 (10) SCC 384

18. In **Abdul Rehman and Anr vs. Mohd. Ruldu & Ors.**⁵ it is held that the object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow the amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

19. In **Pankaja and Anr vs. Yellappa (D) by Lrs. & Ors.**⁶ it was held that if the granting of an amendment really sub-serves the ultimate cause of justice and avoids further litigation the same should be allowed and there can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case. Accordingly the Hon'ble Supreme Court allowed the amendment by setting aside the order of the lower Court.

20. In **Sampath Kumar vs. Ayyakannu and another**⁷ wherein the plaintiff sought for amendment in a suit filed for permanent prohibitory injunction. It was held that in the facts and circumstances of the case allowing the amendment would curtail multiplicity of legal proceedings and it is a well settled rule of practice not to dismiss the suit automatically but to allow the plaintiff to make necessary amendment if he seeks to do so. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after

⁵ 2012 (11) SCC 341

⁶ AIR 2004 SC 4102

⁷ 2002 (7) SCC 559

conclusion thereof. No strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing the prayer for amendment.

21. In **Mohinder Kumar Mehra vs. Roop Rani Mehra**⁸ it was held as under:

“19. While considering the prayer of amendment of the pleadings by a party, this Court in the case of Mahila Ramkali Devi & Ors. Vs. Nandram (Dead) through Legal Representatives & Ors., (2015) 13 SCC 132 has again reiterated the basic principles, which are to be kept in mind while considering such applications in Paragraphs 20, 21 and 22, which is quoted as below:-

20. It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infringement of rules of procedure. The court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting mala fide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.

21. In our view, since the appellant sought amendment in Para 3 of the original plaint, the High Court ought not to have rejected the application.

22. In Jai Jai Ram Manohar Lal v. National Building Material Supply³, this Court held that the power to grant amendment to pleadings is intended to serve the needs of justice and is not governed by any such narrow or technical limitations.”

22. No doubt the plaintiff has come up with altogether a new plea of declaration of title but however as far as the pleadings are

⁸ 2018 (2) SCC 132

concerned the stand of the plaintiff is one and the same right from the beginning. It is consistent case of the plaintiff that he has sent money to the defendants for the purpose of purchasing immovable properties in his name but instead of doing so, the defendants have purchased the same in the names of defendant No.1 and his wife. His further plea is that he recently came to know that the properties are transferred in the name of proposed parties.

23. The whole object of Rule 17 is to avoid multiplicity of litigation. While allowing such a petition for amendment, the Court has to take into consideration whether there is due diligence on the part of the party seeking such amendment and at the same time the same should not be looked at in hyper technical manner. The Court has to see whether the amendment is necessary for determining the real question in controversy and jurisdiction has to be exercised in the larger interest of doing full and complete justice to the parties. Though the application for amendment is filed after commencement of the trial, to put quietus to the litigation and to resolve the dispute between the parties, amendment may be allowed basing on the facts and circumstances of the case.

24. In view of the above, this Civil Revision Petition is allowed setting aside order and decree dated 19.09.2016 passed in I.A.No.654 of 2016 in O.S.No.64 of 2015 by the learned Principal District Judge, Vizianagaram. The plaintiff is directed to amend the plaint as sought for and file neat copy of the same within fourteen

days from the receipt of a copy of the order. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE LALITHA KANNEGANTI

Date: 30.04.2021
IKN

THE HON'BLE SMT JUSTICE LALITHA KANNEGANTI

CIVIL REVISION PETITION No.374 of 2017

Date: 30.04.2021

IKN