

TELANGANA HIGH COURT**Bench: JUSTICE T. VINOD KUMAR****Date of Decision: 14 November 2023**

CIVIL REVISION PETITION No. 3336 of 2023

Smt. M.Naga Dhana LakshmiRevisionist**Versus****Smt. Premalata S. Savakoor**Respondents**Legislation:**

Section 31 of the Specific Relief Act, 1963

Order 6 Rule 17 of the Code of Civil Procedure, 1908

Subject: Amendment of Plaintiff in a Civil Suit for Cancellation of Documents, Transitioning to Declaration of Nullity.**Headnotes:**

Civil Revision Petition – Amendment of Plaintiff – Specific Relief Act, 1963 – Revision against Trial Court’s order allowing amendments post evidence closure, challenged for being barred by limitation. [Paras 1-6]

Amendment of Plaintiff – Principles for Allowing Amendments – Supreme Court guidelines in Revajeetu Builders case – Necessity, bona fide, non-prejudicial, and limitation considerations for amendments. [Para 8]

Suit for Cancellation of Documents – Transformation to Declaration of Nullity – Proposed amendment based on Supreme Court’s dictum in Deccan Paper Mills case – Change from cancellation to declaration of nullity of Sale Deed. [Paras 10-11]

Opposition to Amendments – Change in Suit’s Basic Structure – Petitioner’s contention that amendments alter suit’s character and withdraw prior admissions – Application filed after 15 years without requisite procedural amendments. [Para 12]

Trial Court's Mechanical Order – Lack of Reasoning and Consideration of Parties' Contentions – High Court's disapproval of such orders and emphasis on reasoned decisions. [Para 13]

Decision – Setting Aside Impugned Order – Remitting Back for Fresh Consideration – High Court directs de novo consideration in line with Apex Court's guidelines in Revajeetu Builders case, with no order as to costs. [Paras 14-15]

Referred Cases:

Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Ors (2009) 10 SCC 84

Deccan Paper Mills Co. Ltd., Vs. Regency Mahavir Properties and Ors 2020 SCC OnLine SC 655

Representing Advocates:

Sri. S. Chakrapani for the petitioner.

ORDER:

1. The present Civil Revision Petition is filed aggrieved by the docket dated 26.07.2023 in I.A. No.466 of 2021 in O.S. No.544 of 2021 (Old O.S. No.397 of 2005) passed by the Principal Senior Civil Judge, Medchal-Malkajgiri, at Malkajgiri.
2. Heard Sri. S. Chakrapani, learned Counsel for the petitioner, and perused the record.
3. The respondents Nos. & 2 herein filed the main suit under Section 31 of the Specific Relief Act, 1963 (for short 'the Act, 1963'), for cancellation of instruments.
4. The petitioner herein is defendant No.1 in the suit.
5. The respondents Nos.1 & 2 filed the underlying interlocutory application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short 'the Code') seeking to make amendments to the cause title and prayer portion of the plaint. The Trial Court had passed the impugned docket order allowing the

proposed amendments. Aggrieved by the same, the present revision is preferred.

6. Learned Counsel for the petitioner contends that the impugned docket order was passed without taking into consideration the order passed by the previous presiding officer in I.A. No.473 of 2020 dated 26.07.2023; that the application seeking amendment was filed after the closure of evidence; and that the proposed amendments are barred by limitation.

7. I have taken note of the contentions urged.

8. At the outset it is pertinent to refer to the decision in ***Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Ors***¹, wherein the Hon'ble Supreme Court had postulated important factors to consider while dealing with an application for amendment as under:

“61. The first condition which must be satisfied before the amendment can be allowed by the court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the courts' discretion in grant or refusal of the amendment.

62. The other important condition which should govern the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to other side. Ordinarily, if other side is compensated by costs, then there is no injustice but in practice hardly any court grants actual costs to the opposite side.

65. The Courts have consistently laid down that for unnecessary delay and inconvenience, the opposite party must be compensated with costs. The imposition of costs is an important judicial exercise particularly when the courts deal with the cases of amendment. The costs cannot and should not be imposed arbitrarily. In our view, the following parameters must be taken into consideration while imposing the costs. These factors are illustrative in nature and not exhaustive.

FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

¹ (2009) 10 SCC 84

- (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.

...

70. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.”

(emphasis supplied)

9. The proposed amendments and the impugned order passed by the Court below shall be examined in the light of the above position of law.
10. Initially the suit was filed under Section 31 of the Act, 1963 with a prayer to cancel and deliver the documents viz., Sale Deed bearing No.4549/2002 dated 02.09.2002. Thereafter, the underlying application was filed on the ground that a non-executant of a document should seek a declaration of the said document as null and void, and not cancellation of the document as per the dicta laid down by the Hon’ble Supreme Court in ***Deccan Paper Mills Co. Ltd., Vs. Regency Mahavir Properties and Ors***².
11. The following are the proposed amendments:

² 2020 SCC OnLine SC 655

(i) Proposed amendment in plaint:

'SUIT UNDER SECTION 31/34 OF SPECIFIC RELIEF ACT FOR CANCELLATION/DECLARATION OF INSTRUMENT AS VOID' (ii)

Proposed amendment in the prayer:

*'i. Cancellation and delivery of documents viz., Sale Deed bearing No. 4549/2002 dated 02.09.2002 in the records of the Sub-Registrar, Malkajgiri in respect of the part of the suit schedule property **OR Declare the Sale Deed bearing No. 4549/2002 dated 02.09.2002 in the records of the Sub-Registrar, Malkajgiri as illegal, null and void.**'*

12. The petitioner herein had filed a detailed counter opposing the relief sought for in the interlocutory application. It was categorically pleaded in para 7 of the said counter, that the proposed amendments *if allowed* would change the basic structure and character of the suit, and would allow the respondent Nos.1 & 2 to withdraw the admissions made by them during the course of trial. The petitioner herein in para 11 therein pleaded that the application for amendment is made after a lapse of 15 years from the institution of the suit and without mentioning the consequential amendments contemplated under Rule 28 of the Civil Rules of Practice.
13. However, a perusal of the impugned docket order reveals that the Trial Court allowed the application by merely recording as a reason that the suit was instituted in 2005, without either advertent to the contentions raised by the parties or recording any reasons for allowing the application at a belated stage. This Court has time and again emphasized that a Court is not a post-office to pass mechanical orders on the applications filed before it. It is unfortunate to learn that such orders are being passed each day, despite this Court stressing and echoing that reasons are the heartbeat of every conclusion without which an order becomes lifeless.
14. Therefore, without going into the merits, this Court deems it appropriate to set-aside the impugned docket order and remit the matter back for *denovo* consideration.
15. Accordingly, this Civil Revision Petition is allowed. The docket dated 26.07.2023 in I.A. No.466 of 2021 in O.S. No.544 of 2021 (Old O.S. No.397 of 2005) passed by the Principal Senior Civil Judge, Medchal-Malkajgiri, at Malkajgiri is set aside. The learned judge is directed to decide the matter

afresh in terms of the law laid down by the Apex Court in ***Revajeetu Builders and Developers's*** case (supra).

16. Consequently, miscellaneous petitions pending if any shall stand closed. No order as to costs.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.