

**IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.
AT: HOLALKERE.**

PRESENT: Sri. Saravanan .S.
B.B.M., LL.B.,
Senior Civil Judge and JMFC,
Holalkere.

E.C.A. No.01/2019

Dated: 10th April 2023.

Petitioner/s:

Santhosh

(By Sri. L.K.S., Advocate)

Respondent/s:

Sanna Kenchappa & Another

**(R.1 - Sri. H.R.S., & R.2 –
Sri. B.N.P., Advocates)**

V/s.

PARTIES TO IA NO.VIII

Applicant:

Santhosh

(Petitioner)

Opponent:

V/s. Sanna Kenchappa & Another

(Respondents)

Order on I.A. No.VIII

The learned counsel for petitioner has filed an application U/O 6 Rule 17 R/w Sec.151 of CPC praying to permit the petitioner to amend the pleadings by allowing this application in the interest of justice.

2. In support of this application the petitioner has filed affidavit swearing the reason for getting the pleadings amended.

3. Per contra the respondent No.1 has filed objection.

4. I have heard the learned counsels papering for the parties.

The following points that arises for my consideration:-

1) Whether the petitioner has made out grounds, that the proposed amendment is just and necessary to determine the real question in controversy between the parties?

2) Whether the petitioner has made out that in spite of due diligence, she could not have raise the matter before commencement of trial.?

3) What order?

5. My answer to the above points is as under:-

Point No.1 & 2 : In the affirmative

**Point No.3 : As per the final order
for the following:-**

REASONS

6. **Point No.1 and 2:-** That in order to avoid the repetition of facts, these two points are taken up together for the discussion.

The petitioner has filed the petition against the respondents for the grant of compensation on account of injuries sustained in a Motor Vehicle Accident.

7. Now, the case is posted for cross-examination, that after the PW-1 who withstood the cross-examination by the learned counsel

appearing for the respondent No.1 that in the meanwhile, the petitioner has filed the present IA , and submitted that, the incident occurred on 26-06-2018 at about 2-00 p.m., with respect to that incident, the date of accident was 26-06-2018 mentioned in the medical documents, and also he gave statement before the investigation officer, but the date of accident has been wrongly typed in the petition para No.1, 2 and 6 as 26-10-2018 instead of 26-06-2018. That recently came to know that, in the petition some clerical mistake happened that the application schedule was not inserted in the petition and said mistake is not an intentional one but it is bonafide mistake. So, that , if the Court permits him to amend the petition schedule as per application schedule, it will not change the nature and character of the petition and it will not introduce any new cause of action and there is no hardship will cause to the other side. Hence, prays to allow the application.

8. On the other hand, the learned counsel for respondents submitted that the application filed by the petitioner is not bonafide and maintainable in law. The guardian of the petitioner has stated false facts in the application enclosed affidavit and all the contents of said affidavit are hereby denied as false and baseless it is an afterthought in order to cure the lacuna which is already in the case of the petitioner and stated that the guardian of the petitioner has admitted the facts in the cross examination, so that very application is filed just to drag the proceedings. Hence, prays to reject the application.

9. In view of the arguments advanced by the either side and also perusal of the application and objection and also perusal of the

contents of pleadings it reveals that the proposed material facts mentioned in the schedule of the application is not narrated in the petition para No.1, 2 and 6 of the plaint as 26-10-2018 instead of 26-06-2018 of the schedule.

10. It is worth to note that according to Order 6 Rule 17 there is a proviso 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 the trial."* In view of this exception it reveals that in the present case in hand the trial has begin and the PW-1 has been cross examined by the respondent No.1. The petitioner has stated that due to oversight and mistake the said proposed material facts mentioned in the schedule are not inserted in the petition and the said mistake is not an intentional one and it is bonafide. However, *"the rule of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused to relief merely because some mistake, negligence, inadvertence or infraction of the rules of procedure. The Court always allows amendment unless it is satisfied that there was malafides or blunder which had caused injury to the other side and which could not be compensated by costs. However, negligence or careless may have been his omission and however lay the proposed amendment may have been sought, it will be allowed if no injustice will cause to the other side."*

11. On perusal of the provision U/O 6 Rule 17 the very Object of said provision is partly mandatory and partly directory. **"Test that governs issue of amendment is real controversy test."** Further, it is

main object of the said provision that "the court should not go into the correctness of falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merit of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer of amendment". In this regard, this Court has relied on the decision of Hon'ble Apex Court reported in **AIR 2006 SC 1647** in the case of **Rajesh Kumar Aggarwal & Ors. Vs. K.K. Modi & Ors.,**

12. In view of the above noted principles it appears that the power of granting amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court that even though the PW-1 was cross examined, the proposed amendment is sought only to amend the actual date of alleged accident, that is '26/06/2018' in the place of '26/10/2018' since, the party who sought amendment has made out grounds that, in spite of due diligence, she could not rise the matter before commencement of trial and moreover, it may have occurred at the time of drafting the petition by the counsel for the petitioner, and there is no such intent of filling up the lacuna, are forthcoming from the materials placed before the Court. Hence, the objection raised by respondents is not justifiable. Hence, for the above reason **point No.1 and 2 are answered in the affirmative.**

13. **Point No.3:-** In view of the above reasons, I proceed to pass the following:-

ORDER

The IA No.VIII filed by the petitioner guardian U/O 6 Rule 17 R/w Sec.151 of CPC is hereby allowed.

The petitioner is directed to amend the pleadings within 10 days from the date of this order.

For amendment and for amended petition, call on 10/05/2023.

For the facts and circumstances of the case no cost is awarded.

(Dictated to the Stenographer directly on the computer, typed by him, corrected by me, then pronounced in the Open Court on this the 10th day of April 2023)

(Sri. Saravanan .S.)
Senior Civil Judge & JMFC.,
Holalkere.