

13 / 12 / 2019

Plaintiff by - AVJ
Def.No.1,2, 4 to 7 - Exparte
Def.No.3 by - SJ

for orders on I.A.No.8

Orders on IA.No.8

The defendant No.3 filed present application U/o 6 Rule 17 R/w section 151 of C.P.C. and prays to permit the defendant No.3 to carry out the proposed amendment in his written statement.

2. The application is support by an affidavit sworn to by defendant No.3 by name P. Shivakumar.

3. On the contrary the learned advocate for plaintiff filed objections and prays to dismiss the application.

4. Heard, perused the materials placed on record.

5. The following points arise for my consideration:

- 1) Whether the application filed by the defendant No.3 U/o 6 Rule 17 R/w section 151 of C.P.C. is deserves to be allowed ?
- 2) What order ?

6. My answers to the above points are as follows:

Point No.1 : As affirmative.

Point No.2 : As per the final order for the following:

REASONS

7. **Point No.1** :- The learned advocate for defendant No.3 contended that the plaintiff filed the present suit for enforcement of specific performance of contract. The present defendant No.3 along with other defendants filed Miscellaneous Petition No.4/2013 U/o 9 Rule 13 of C.P.C. seeking setting aside the exparte Judgement and Decree dated 14/02/2013 passed in OS.437/2006 on the file of Hon'ble Prl. Judge, Small Cause Court, Mysuru and the above said court has allowed the petition by its order dated 08/02/2019 and by virtue of the said orders the records of this suit were restored to its original file on 21/02/2019. The defendant No.3 along with other defendants have filed their written statement on 15/04/2019. The proposed amendment is vital and prolific additional defence matrix which goes to the route of the matter. The same is cogent, relevant and germane for adjudication of questions involved in the suit. The proposed amendment is aimed at amplification of defence of defendant No.3 which provides maximum assistance to the court in dealing with the matter in issue. In spite of exercising due diligence defendant No.3 could not present the proposed defence. The same is not intentional and bona fide one. The commencement of trial does not born the adjudication of the application in the present cogent explanation. The principles that governed the amendment of written statement are on entirely different footing to that of principles that govern amendment of plaint. The proposed amendment is not belated nor barred by principles of law of limitation. The

original suit is restored only on 21/02/2019. Hence prays to allow the application.

8. On the other hand the learned advocate for plaintiff contended that the application is highly misconceived and not maintainable either under law or on facts. The application is filed at belated stage and the same is an after thought to cause prejudice to the plaintiff. The proposed amendment to bring facts which ought to have been within the knowledge of defendant No.3 at the time of filing the written statement itself. As such the defendant No.3 has not acted diligently. The proposed amendment introduces a new defence on behalf of other defendants. The application is filed only to protract the proceedings. Hence prays to dismiss the application.

9. The learned advocate for defendant No.3 produced and relied on the following decisions.

- 1) (2018) 2 Supreme Court P.87.
- 2) 2018 (4) AKR 527
- 3) AIR 2007 Supreme Court 1663.
- 4) AIR 2006 Supreme Court 2832.
- 5) AIR 2009 Supreme Court 2554.
- 6) ILR 1999 KAR 2358.
- 7) ILR 1995 KAR 1808.

10. On the other hand the learned advocate for plaintiff produced and relied on the following decisions;

- 1) (2008) 7 SCC 85

11. It is pertinent to note that no doubt now the case is posted for cross-examination of PW.1 and as per amended provisions of order 6 Rule 17 C.P.C. 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:

12. 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.”

13. But it is significant to note that in order to adjudicate the matter between the parties completely and effectively and also in the interest of natural justice an opportunity shall be given to defendant No.3 to put forth his defence. The hardship that would be caused to the plaintiffs can be compensated by imposing costs. Hence, I answer Point No.1 as affirmative.

14. Point No.2 :- In view of my findings of point No.1 as affirmative, I proceed to pass the following:

ORDER

I.A.No.8 filed by the defendant No.3
U/o 6 Rule 17 R/w section 151 of C.P.C. is
allowed on payment of cost of Rs.500/-.

For amendment by 18/12/2019.

Sd/-
JUDGE,
Addl. Court of Small Causes,
MYSURU.