

Order on I.A.No.4 filed by D.hr Under Order VI
Rule 17 r/w Sec.151 of CPC

Sri.MR, advocate filed I.A.No.4 under Order 6 Rule 17 r/w Sec.151 of C.P.C., for deleting the provision under "21 Rule 2 CPC mentioned in the execution petition and to "add under Order 21 Rule 32 of CPC.

2. The D.hr sworn to the affidavit stating that he has filed this petition against the J.Dr for disobedience of the order of injunction and the case was posted for steps, at that time the Dhr has filed this present petition under Order 21 Rule 2 of CPC which was wrongly mentioned instead of mentioning under 21 Rule 32 of CPC. The said mistake is typographical error and it is necessary to rectify the same. The proposed amendment does not change nature and circumstances of the case nor introduce new facts. On all these grounds the D hr has prayed for allowing the application.

3. Heard both sides.

4. The points that would arise for my consideration is as under.

1. Whether the application filed by D.hr under Order 6 Rule 17 r/w Sec.151` of C.P.C., is deserves to be allowed ?
2. What order?

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

Point No.1 : in the Affirmative

Point No.2 : As per final order:

REASONS

6. POINT No.1: The D.Hr has filed this Execution petition for executing the preliminary decree passed in RA 87/2002 by the Senior Civil Judge and JMFC, Nanjangud. On perusal of the order sheet it reveals that when the case was posted

for steps to issue cause notice to the Jdr at that time the Dhr has filed this present application. On perusal of the petition it reveals that the provision **mentioned in the petition as under Order 21 Rule 2 of CPC but the decree passed in RA No.87/2002** is in respect of injunction decree. Therefore, the petition ought have been presented under Order 21 Rule 32 of CPC, but due to typographical error the provision was mentioned as order 21 rule 2 of CPC. The order 21 rule 2 of CPC provides for payment out of court to decree holder as this is a petition filed in order to execute the injunction order passed in RA No.87/2002 there will be no question of payment by the Jdr to the decree holder. Therefore, the D.Hr has moved the present application. In order to execute the decree the correct provision has to be mentioned in the petition. Therefore, it is necessary to allow the proposed amendment to the petition if the application is not allowed the decree cannot be executed. Therefore, in order to satisfy the decree it is necessary to allow the application filed by the D.hr. Therefore, the proposed amendment apparently seems to be necessary for the fair adjudication of the real controversy in between the parties.

The I.A.No. No.4 satisfies the ingredients which were enumerated in order 6 rule 17 of C.P.C... Therefore, it is necessary to allow the interim application. Hence, I proceed to pass the following:

:: Order ::

The Interim Application No.4 filed by D.hr Under Order 6 rule 17 r/w Sec.151 of C.P.C., is allowed.

The D.hr is hereby permitted to amend the petition and to furnish amended petition copy on the next date of hearing without fail.

Call on 27.11.2017

I ACJ & JMFC., Nanjangud