

**IN THE COURT OF DISTRICT MUNSIF, KATPADI, VELLORE DISTRICT
PRESENT: THIRU. K.VENKATESAN, B.A., B.L.,
(J.O.Code – TN02266)
DISTRICT MUNSIF, KATPADI**

Friday, this the 21st Day of March – 2025

**I.A.No. 2 of 2023
In
O.S.No. 58 of 2020
(CNR.No.TNVL23-000104-2020)**

Sudhakaran

.....Petitioner/Plaintiff

-Vs-

1. M.Dhananchezhiyan
2. M.Senthilkumar

.....Respondents/Defendants

This petition has come up today before this Court for orders, upon hearing the arguments of Thiru. A.Kutbudeen, the Counsel for Petitioner, and Thiru. S.Dhayanithi, the Counsel for Respondents-1 & 2, and upon perusing the petition, counter and records pertaining to this case, and having stood for consideration till this date, this Court delivers the following:-

ORDER

This petition has been filed by the Petitioner/Plaintiff under Order 6 Rule 17 and Section 151 of Code of Civil Procedure, for permit him to amend the Plaint as per the particulars mentioned in the Petition.

1. **Brief averments of the affidavit filed by the Petitioner is as follows:-**

1.1 The Petitioner is the Plaintiff in the main Suit. He have filed 3 Suits as against the Defendants for Recovery of Money based on Promissory Note, and he have issued only one Pre-Suit Notice to the Defendants, and to the same effect only Two Acknowledgment Cards has been served to them. The Original Documents have been filed in O.S.No. 56 of 2020. Hence, the Xerox Copies of the Original Documents i.e., the Office Copy of Notice and Acknowledgment Cards were filed in this case. Further, he have applied for the Certified Copies through the Court. That those documents have to be filed in this case, and those documents are most essential for the case.

1.2 The Defendants have engaged the Counsel for defending the case from the initial stage. The Defendants have also filed Written Statement on their side. When the matter is posted for Trial, the Defendants never turned up for a long time. All of a sudden, the Defendants have stated that they are going to change the another Counsel for defending the case, but they have never kept the words. Even after granting sufficient times by this Court, the Defendants have never turned up. Then the Defendants' new

Counsel has reported that the Defendants never given him the Change of Vakalath. Time was also lapsed and there was no other to go.

1.3 While going through the Plaintiff averments, this Court has found out that the Xerox copies alone has been filed in this case. In order to set right in the Plaintiff, the Particulars of Amendment is being required for proper adjudication. The Defendants will not be having any sort of objection, and there cannot be any change in the case as well as in the cause of action. The Defendants will not be prejudiced at any point of time by allowing this Amendment, and prayed to Amend the Plaintiff as morefully described in the Amendment petition.

2. **Brief averments of the Counter filed by the 1st Respondent is as follows:- (Adopted by the 2nd Respondent)**

The petition filed by the Petitioner praying to permit him to Amend the Plaintiff as per the Particulars of Amendment furnished in the petition at the Trial Stage is not maintainable either in law or on facts, and the Respondents denies the all the allegations made in the Petitioner's Affidavit, and put him to strict proof of the same. It is true that the above Suit is Pro-Note. Including the service of pre-Suit Notice. The date of pre-Suit Notice was not mentioned even in the particulars of Amendment. After filing of the Written Statement in the verge of framing of issue for Trial, the above petition requiring for an Amendment in an behalf handed manner without full-fledged manner by stating the O.S.No. 56 of 2020 in the above Suit, is not maintainable. Without mentioning the

pleading of O.S.No. 56 of 2020 on the file of this Court, the above petition is not maintainable, and therefore, they prayed to dismiss the petition with costs.

3. Neither the Petitioner nor the Respondents have placed any oral or documentary evidence before this Court.

4. **Point for Consideration:-**

- (a) Whether this petition to Amend the Plaint as per the particulars mentioned in the petition, is entitled to be allowed or not?

5. **Answering to the Point:-**

Both sides has been heard. Records perused. Upon careful analysis of the entire case records including the petition, counter and upon considering the arguments on either sides, it reveals that the Plaintiff has filed the Suit for Recovery of Money based on Promissory Note with calculating accrued interest thereon, as against the Defendants, and for costs.

6. The present Petitioner is the Plaintiff, and the Respondents herein are the Defendants in the main Suit. It is seen from the records that in the Suit proceedings, on receipt of Summons, the Defendants have entered appearance through their erstwhile Advocate, and have filed their Written Statement on 01.11.2021. Necessary issues were framed as early as on 14.02.2021. As on date, the Trial has not commenced yet. At this juncture, the Petitioner/Plaintiff has come forward & filed this Amendment petition.

7. Before parting with the petition, it is appropriate to see Order 6 Rule 17 of CPC which reads as under:

“17. Amendment of Pleading.—

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.”

7.1 In this regard, it is inevitable to rely upon the Judgment of the **Hon’ble Apex Court** rendered in the case of **Rajkumar Gurawara (Dead) Through L.Rs Vs. S.K.Sarwagi & Company Private Limited & Anr.**, reported in **(2008) 14 SCC 364**, considered the scope of Amendment of pleadings before or after the commencement of the Trial. Wherein Paragraph-18, held as under:-

“...It is settled law that the grant of application for amendment be subject to certain conditions, namely, (i) When the nature of it is changed by permitting amendment; (ii) When the amendment would result introducing

new cause of action and intends to prejudice the other party; (iii) When allowing amendment application defeats the law of limitation...”

7.2 In another Judgment of our **Hon’ble Apex Court** in the case of **Revajeetu Builders & Developers Vs. V. Narayanaswamy & Sons**, reported in **(2009) 10 SCC 84** in which held that while considering an application for amendment, the Court is not to examine the merits of the amendment or to consider the strength or weakness of the case of the applicant, but to examine the proposed amendment to ascertain whether the nature and character of the Suit is sought to be changed by the proposed amendment. More particularly, in Para-67 what are the factors to be taken into consideration while dealing with application for amendments, which 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 not 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 of CPC. These are only illustrative and not exhaustive.”

8. Keeping the above principles & factors in mind, this Court deals the present case on hand. In the affidavit, the Petitioner/Plaintiff has stated that he have filed 3 Suits as against the Defendants for Recovery of Money based on Promissory Notes, and he have issued only one pre-Suit Notice to the Defendants and 2 Acknowledgment Cards has been served on them. Further, the Original documents have been filed in O.S.No. 56 of 2020, and therefore, he has filed the Xerox Copies of the same in this Suit, and he has applied for Certified Copies of said documents through Court process, and those documents have to be filed in this Suit which are most essential for the above said case, and he is seeking for permission to amend the Plaint.

9. On the other hand, the Respondents did not objected the correctness of the proposed Amendments as sought for in the petition, but contented that it was filed after their Written Statement and there was no pleadings in respect of O.S.No. 56 of 2020 in the Plaint, and no date of pre-Suit Notice mentioned in the proposed Amendment, and therefore, they prayed to dismiss the petition.

10. It is seen from the proposed Amendment that the Petitioner/Plaintiff has filed this present petition only to bring out the particulars of other 2 Suits filed by him as against the Respondents/Defendants in respect of similar reliefs as sought for in the present Suit that was also pending before this Court, and he has sent a pre-Suit Notice to the Defendants for all the above 3 Suits, and he filed the Originals documents only in one Suit i.e., O.S.No. 56 of 2020, and he obtained Certified Copies of the same and he has prayed for substitute the same in this Suit instead of Originals, for decision of the case.

11. It is seen from records that the 1st Defendant had filed Written Statement. It had adopted by the 2nd Defendant. The said Written Statement has been filed by attaching the Lawyer Notice dated 29.05.2019 which was sent by the Plaintiff through his Advocate. Wherein it is mentioned as separate columns with regard to the 3 Promissory Notes' Dates, Amount & interest. The said Notice was issued calling upon the Defendant to pay the said 3 Promissory Notes Amount along with interest within a Week of receipt of Notice.

12. From the above observations, the Defendants have not disputed that the receipt of Lawyer Notice dated 29.05.2019 issued by the Plaintiff for 3 Promissory Notes. In bare reading of the Written Statement, the Defendants have taken a defence that there was material alteration in the said Promissory Notes and it was void as per

Section 87 of the Negotiable Instruments Act, and the Plaintiff has suppressed the earlier legal notice dated 12.08.2020 sent by him, and thus, the Suit is barred by limitation.

13. Further, it is imperative to note that nowhere in the Counter & Written Statement, the Respondents/Defendants have disputed the present petition contentions of the Petitioner/Plaintiff that he has filed 2 other Suit as against them for the similar reliefs based on the said single pre-Suit Notice, and the receipt of the said Notice by them. Further, the Defendants have not expressly denied that the said Original Lawyer Notice has marked in O.S.No. 56 of 2020, and it has significance with the present Suit. From the above implied admissions of Respondents, this Court is of the view the said Original documents are vital to the present Suit on hand. It is apposite to note that this petition has been filed before the commencement of Trial.

14. Considering the above all facts, this Court is of the considered view that since the Suit is for Recovery of Money, and the Amendment sought for in this petition is connecting with other Suits filed by the Plaintiff as against the Defendants for similar reliefs based on a single pre-Suit Notice, and the same is imperative for the proper and effective adjudication of the case, and the said amendment if allowed will not cause any pre-judice to the Respondents. Further the said Amendment, shall not bring any change in the nature of the Suit or to the cause of action of the Suit. Further, it would bring more clarity and would help in proper adjudication of the Suit. Though, the Petitioner/Plaintiff did not give correct particulars in Plaint at the time of filing of the Suit, it is to be noted

that they have filed this petition before this Court only on 23.11.2023 within 3 years from the date of filing of Written Statement i.e., 01.11.2021 and also, before the Commencement of Trial. For the above said reasons, this Court is inclined to allow this petition. Accordingly, the Point is answered in favour of the Petitioner.

15. **Result:-**

From the above cumulative discussions and in the interest of justice, this petition is allowed. No costs.

-//Directly typed by me in Laptop, corrected and pronounced by me in the Open Court, on this the 21st Day of March – 2025.//-

(Sd/-)..K.Venkatesan
DISTRICT MUNSIF
KATPADI

Both side documents and witnesses: Nil

(Sd/-)..K.Venkatesan
DISTRICT MUNSIF
KATPADI