

HIGH COURT OF ANDHRA PRADESH AT AMARAVATHI

CIVIL REVISION PETITION No.291 OF 2022

Ideal College of Arts and Science,
through its Governing Body,
represented by its Secretary and Correspondent,
Samalkot, Kakinada, East Godavari District.

... Petitioner

Versus

Medical Education Society (Regn.No.15/1958),
Kakinada, rep. by its President, Kakinada.

... Respondent

DATE OF ORDER PRONOUNCED: 27-06-2022

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals. Yes/No
3. Whether Their ladyship/Lordship wish
to see the fair copy of the Judgment? Yes/No

NAINALA JAYASURYA, J

THE HON'BLE SRI JUSTICE NINALA JAYASURYA*+ CIVIL REVISION PETITION No.291 of 2022****%Date : 27.06.2022**

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! Counsel for the Petitioner : Mr.Vedula Venkata Ramana,
Learned Senior Counsel

^ Counsel for the Respondent : Mr.K.Chidambaram

< GIST : --**> HEAD NOTE : --****? Cases referred : --**

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI**THE HON'BLE SRI JUSTICE NINALA JAYASURYA****CIVIL REVISION PETITION No.291 of 2022**

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Learned Senior Counsel

Counsel for the Respondent : Mr.K.Chidambaram

ORDER:

The present Revision Petition has been preferred against the Orders dated 20.01.2022 in I.A.No.14 of 2022 in O.S.No.108 of 2015 on the file of the Court of the IV Additional District Judge, Kakinada, East Godavari District.

2. Heard Mr.Vedula Venkata Ramana, learned Senior Counsel for the petitioner and Mr.K.Chidambaram, learned counsel for the respondent.

3. The petitioner herein is the defendant in the above referred suit. The respondent/plaintiff-society filed the suit against the petitioner/defendant-society seeking a decree in its favour and against the petitioner/defendant-society; a) for physical possession of the plaint schedule property after evicting the defendant therefrom; b) to award past damages of Rs.46,00,000/- with interest thereon at 12% per annum from the date of the suit till the date of realization; c) to award future

damages at the rate of Rs.2,00,000/- per month from the date of the suit till date of the delivery of vacant possession of the plaint schedule property to the plaintiff; d) to award costs of the suit; and e) to grant such other reliefs.

4. The case of the respondent/plaintiff-society as set out in the plaint in brief, may be narrated for better appreciation of the issues.

5. The plaintiff-society is the owner of property popularly called as "Simpson Building", the particulars of which are fully described in the plaint schedule. At the request of the petitioner/defendant-society, it gave license over the said property to the petitioner/defendant-society to run colleges and later leased it out to the petitioner/defendant-society at an annual rent of Rs.2,000/-. Subsequently, the rent was increased to Rs.12,000/- per annum. Though the property is extensive, it was leased out for nominal amount, as the objectives of the respondent-society and the petitioner-society are similar. On 1st July, 1981, the respondent and the petitioner came to an understanding that the lease is to be for a period of 30 years. The petitioner/defendant entered into possession of the plaint schedule property, as lessee, continued and began to run Ideal College of Arts and Sciences. As the said lease came to an end by the end of 30 years period by March, 2013, the petitioner/defendant has no right to continue in possession of the plaint schedule property, and as the respondent/plaintiff-society was contemplating to start Para-medical institutions in the property in question, the petitioner/defendant-society was requested to handover the property. However, the petitioner/defendant addressed a letter dated 17.04.2013 to the respondent/plaintiff enclosing a cheque dated 17.04.2013 for Rs.12,000/-

towards the rent for the year 2012-2013 with a request to execute regular lease deed for another period of 30 years. The respondent/plaintiff got issued a reply dated 17.05.2013 stating *inter alia* that it is not prepared to lease out the plaint schedule property and returned the cheque. The petitioner/defendant then got issued notice dated 30.05.2013 stating that the plaint schedule property comes under A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, that it had spent Crores of Rupees on the buildings constructed in the schedule property and that the respondent/plaintiff has been promising to pay the said amounts from time to time along with other claims.

6. Against the backdrop of the above stated position, the respondent/plaintiff filed the suit on 26.03.2015, seeking the reliefs as mentioned supra.

7. On 30.08.2015, the petitioner/defendant-society filed its written statement *inter alia* stating that the suit as laid by the respondent/plaintiff-society is not maintainable in Law. While admitting that the petitioner/defendant is a tenant in possession of the property, it was averred that the plaint schedule property is not correct, as part of the same was acquired by the Government. Denying the statement that the lease came to an end by the end of March, 2013 was absolutely false, it was pleaded that as per the resolutions passed by the respondent/plaintiff-society, the lease was extended from March, 2013 and a Registered Lease Deed has to be executed and that the petitioner/defendant had written a letter on 17.04.2013 to the plaintiff/respondent-society to extend the lease period. The petitioner/defendant also pleaded that the said letter dated 17.04.2013

and its reply notice dated 30.05.2013 may be read as part of the written statement. A plea was also taken that the plaintiff suppressed the resolutions passed from time to time, wherein it was mentioned that the lease was extended in favour of the petitioner/defendant-society and a separate lease has to be executed in its favour. The petitioner/defendant sought dismissal of the suit by raising a further plea that the suit as laid under the provisions of Transfer of Property Act is not maintainable and the provisions of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 only applies.

8. The learned Trial Judge, on the basis of the above referred pleadings formulated the issues. When the matter is coming up for cross examination of P.W.2, the petitioner/defendant filed an application i.e. I.A.No.14 of 2022 under Order VI, Rule 17 and Section 151 of CPC seeking amendment of written statement by adding Para 9(a) after Para 9 of the written statement, which reads thus:

“From 1972 onwards the plaintiff/petitioner society gave license to the respondent/defendant society to run the educational institution as Ideal College of Arts and Science in the plaint schedule property and the said license is not revoked by the plaintiff/petitioner society at any point of time.”

9. The respondent/plaintiff filed a counter opposing the amendment as sought for by the petitioner/defendant. The learned Trial Judge after due consideration of the matter through the impugned Order, dismissed the said application. Hence, the present Revision Petition.

10. The learned Senior Counsel while referring to the relevant averments in the plaint *inter alia* submits that the respondent/plaintiff gave license in respect of the suit schedule property to the petitioner/defendant and the respondent/plaintiff's stand of oral lease is strange as the parties to the suit are corporate entities. He submits that no details of lease were furnished in the plaint nor a copy of lease deed was filed. He submits that as the petitioner/defendant was placed in possession of the property pursuant to the license granted to it by the respondent/plaintiff and the same has not been revoked, the necessity to file application seeking amendment of written statement had arisen. He submits that the proposed amendment would not, in any, manner amount to introducing of a new case, nor the same would prejudice the respondent/plaintiff, but would enable the learned Trial Court to render complete justice to the parties. He submits that the Law relating to the pleadings applies differently to the plaintiff and defendants – while plaintiff as the author of the suit has no much leverage and in so far as amendment of written statement is concerned, it should be liberally allowed. Stating that the proviso to Order VI, Rule 17 of CPC has to be applied with reference to the facts of each case, he also submits that non-revocation of license is not a new plea and in the absence of revocation of license, the suit claim is not maintainable. He further submits when an amendment was sought on legal ground, the same deserves to be allowed. He submits that though a limited relief was sought for by way of the present amendment application, the learned Trial Court misapplied the proviso to Order VI, Rule 17 of CPC. Placing reliance on the Judgment of the Hon'ble Supreme Court in **Rajesh Kumar Aggarwal & Ors vs K.K.**

Modi & Ors¹, the learned Senior Counsel emphasizes that the amendment sought for is necessary for determining the real question in controversy between the parties, but the learned Trial Judge failed to consider the matter in the correct perspective and committed a serious error in rejecting the application for amendment of written statement and therefore, the Order under Revision deserves to be interfered with by this Court in exercise of powers under Article 227 of the Constitution of India. Making the said submissions, the learned Senior Counsel seeks to allow the Revision Petition.

11. The learned counsel for the respondent/plaintiff while refuting the contentions of the learned Senior Counsel, *inter alia* submits that the petitioner/defendant-society was inducted as licensee in the suit schedule property, but later a lease was entered into for a period of 30 years as per the understanding between the parties, and even as per the admitted case of the petitioner/defendant-society, as is evident from the written statement. While referring to Para 6 of the written statement, he contends that if the amendment sought for is allowed, it amounts to permission to the petitioner/defendant-society to recile from its earlier stand and to take a new defense. He further contends that the application in question was filed at a belated stage and that in the affidavit filed in support of the same, no plea with regard to due diligence on the part of the petitioner/defendant-society was taken and unless the Court is satisfied that despite due diligence an application seeking amendment of pleadings could not be filed before commencement of Trial as envisaged in proviso to Order 6, Rule 17 of CPC, no amendment can be allowed. In support of

¹ (2006)4 SCC 385

his contentions, the learned counsel places reliance on the decisions in **Bhamidimarri Vijaya Lakshmi vs. M.Uma Lakshmi**², **Ankam Govindamma vs. Syed Shafeeullah**³, **M.S. Gnanambika vs. V.Subramanyam**⁴ and **Nallala Bhaskar Reddy vs. Nallala Mangamma and others**⁵. He also submits that the contentions with regard to the lease deed and maintainability of the suit etc. are not germane for consideration in the present Revision Petition. The learned counsel also submits that the application in question was filed only with a view to drag on the proceedings, there are no merits in the present Revision Petition and therefore the same may be dismissed.

12. In reply to the said arguments, the learned Senior Counsel submits that it is permissible for the petitioner/defendant to take alternative/inconsistent pleas as defense. He also submits that the learned Trial Court has not applied its mind in deciding the issue in real controversy and not recorded any finding with regard to due diligence. In any event, the learned counsel submits that the learned Trial Court should have adopted a liberal view, as per the settled Law instead of pre-judging the matter.

13. On a due consideration of the contentions advanced by both the learned counsel and perusing the material on record, the point that falls for consideration by this Court is as to "*Whether the Order under Revision rejecting amendment of written statement is not sustainable and warrants interference by this Court?*"

2 2018 (1) ALT 323 (S.B.)

3 2018 (4) ALT 421 (S.B.)

4 2019 (5) ALT 203 (S.B.)

5 2021 (1) ALT 226 (S.B.)

14. At the outset, it may be noted that as submitted by the learned Senior Counsel, the Courts should be liberal in allowing the prayer for amendment of pleadings, unless serious injustice or irreparable loss is caused to the other side. It is also true that the Courts should be more liberal in allowing amendments of written statements than of plaints. However, by virtue of proviso to Rule 17 of Order VI of CPC, no application seeking amendment shall be allowed after the Trial has commenced, unless the Court comes to a conclusion that in spite of due diligence, the party could not have raised the plea before the commencement of trial.

15. At this juncture, it may be appropriate to extract Order VI, Rule 17 of CPC for ready reference.

“Or. 6 R. 17: Amendment of Pleadings: 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.”

16. The Hon’ble Supreme Court in **M.Revanna vs. Anjanamma (Dead) by L.Rs6** was dealing with a matter, wherein the Trial Court allowed an application filed by the plaintiff under Order VI, Rule 17 of CPC. On challenge, the High Court set aside the same and the matter was carried by way of appeal to the Hon’ble Supreme Court by the unsuccessful Plaintiff. While confirming the Order of the High Court at Para 7 of the said Judgment, the Hon’ble Supreme Court held as follows:-

"7. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to Order VI Rule 17 of the CPC virtually prevents an application for amendment of pleadings from being 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. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier."

Thus, the burden is on a party to plead and prove that despite due diligence, the amendment could not be sought for before commencement of the trial.

17. In **M.S. Gnanambika's** case referred to supra, an Order of the Learned Trial Judge dismissing the application under Order VI, Rule 17 of CPC seeking amendment of written statement was called in question. A learned Judge of this Court, in the Revision Petition, upheld the Order of the Trial Court *inter alia* holding that the petitioner therein failed to satisfy the Court with regard to exercise of due diligence, as contemplated under proviso to Order VI, Rule 17 of CPC. The relevant portion of the Judgment may be extracted hereunder:-

"16. But, the principle laid down in Baldev Singh v. Manohar Singh (referred supra) was considered by the Full Bench of the Supreme Court in "Kailash v. Nankhu3", wherein, it was held that, when the issues were framed, the trial is deemed to have been commenced and the same principle is reiterated in Vidyabai & Ors v. Padmalatha & Anr, (2009) 2 SCC 409.

17. In view of the law laid down by the Apex Court in the above judgments, when issues were framed and the suit is posted for trial, the trial is deemed to have been commenced. Therefore the principle laid down in Baldev Singh v. Manohar Singh (referred supra) is no more good law, in view of the judgment of the Apex Court in Kailash v. Nankhu (referred supra).

18. In J. Samuel v. Gattu Mahesh, (2012) 2 SCC 300, the Supreme Court laid down certain tests as to what is 'due diligence' with reference to Order VI Rule 17 C.P.C and proviso thereto and held as follows:

"13. Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Due diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term 'Due diligence' is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial.

14. A party requesting a relief stemming out of a claim is required to exercise due diligence and is a requirement which cannot be dispensed with. The term "due diligence" determines the scope of a party's constructive knowledge, claim and is very critical to the outcome of the suit."

19. The word "due diligence" is not exactly defined by the Act, but in *Bharat Petroleum Corporation Ltd. v. Precious Finance Investment Pvt. Ltd.*, 2006 (6) BomCR 510, the Apex Court held as follows:

"The Dictionary meaning of the expression "due diligence" as given in the *Blacks Law Dictionary, Sixth Edition, 1990* means "Such a measure of prudence, activity or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case." Similarly the *Law Lexicon by P. Ramanatha Aiyer, Second Edition (Reprint) 2001* explains "due diligence" to mean such watchful caution and foresight as the circumstances of the particular case demands. While examining the explanation offered or cause shown as to why in spite of due diligence a party could not have raised the matter before commencement of trial, the Court may have to see the circumstances in which the party is seeking amendment. In short the explanation as to "due diligence" depends upon the particular circumstances and the relative facts of each case to reach a conclusion one way or the other."

20. In *Chander Kanta Bansal v. Rajinder Singh Anand*, (2008) 5 SCC 117, taking note of the object and purpose of Amendment Act 22 of 2002, the Supreme Court held that, the entire object of the said amendment is to stall filing of applications for amending a pleading subsequent to the commencement of trial, to avoid surprises and to ensure that one party has sufficient knowledge of the case of the other party.

21. In view of the tests laid down by the Apex Court in the judgments referred supra as to what amounts to exercise of 'due diligence', the petitioner in the present case did not aver anything in the entire affidavit as to how she exercised due diligence and despite exercise of due diligence, she could not bring those facts on record before commencement of trial. When the petitioner did not raise such plea in the affidavit filed along with this petition, the question of substantiating the same does not arise and in fact, both the parties went into trial, despite denial of title of this petitioner by the respondents about 10 years ago. Suggestions were also put to the witnesses denying the title of the petitioner. But, they did not open their eyes and slept over for a considerable

period of time and when defendants witnesses are to be cross- examined, the petitioner realized the mistake she committed in seeking relief and filed petition under Order VI Rule 17 C.P.C to raise a plea that the document sued upon is fabricated, though a specific plea is raised that the document is created one, without explaining as to how she exercised due diligence and failed to take such steps.

22. If, the tests laid down in the two judgments referred supra, are applied to the present facts of the case, this petitioner as an ordinary prudent woman failed to take necessary steps before commencement of trial. Failure to take steps at an earlier stage without exercise of due diligence, disentitled her to claim such relief. Therefore, on this ground alone, this petition is liable to be dismissed.

23. Unless the petitioner satisfied the Court that, despite exercise of due diligence, she could not have brought the facts on record before commencement of trial. The amendment cannot be allowed as a matter of routine.

24. Further, in "Mohinder Kumar Mehra v. Roop Rani Mehra & Ors8", it was held that, the proviso to Order VI, Rule 17 prohibits the entertainment of an amendment application after the commencement of the trial with the sole object that once the parties proceed with the leading of evidence then ordinarily no new pleading should be permitted to be introduced."

18. In **Bhamidimarri Vijaya Lakshmi's** case referred to supra, the Order of the Trial Court dismissing the application seeking amendment of plaint under Order VI, Rule 17 of CPC was under challenge. The learned Judge of the erstwhile Common High Court for the State of Telangana and State of Andhra Pradesh at Hyderabad confirmed the Order of dismissal, however for the reasons independently assigned by him. The learned Judge while dismissing the Revision Petition has also taken note that the affidavit did not explain the necessity of seeking amendment of the prayer and that even the conduct of the petitioner does not show that he had exercised due diligence in filing the application for amendment.

At Para 8 of the Judgment, the learned Judge held as follows:-

"8. Be that as it may, the point that needs to be considered is whether the petitioner is entitled for amendment of the plaint. Under Order VI Rule 17 CPC, 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. The proviso to the said Rule, however, bars such amendment 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. Under this provision, a party seeking amendment has to necessarily satisfy two requirements, namely, (i) that the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties and, (ii) if the trial has been commenced the party must satisfy the Court that in spite of his exercising due diligence he could not file an application for amendment before the commencement of the trial. The affidavit filed in support of I.A. No.10 of 2017 is silent on both the aforementioned aspects. It is not explained therein as to how the proposed amendment is necessary for determining the real questions in controversy."

19. **Ankam Govindamma** referred to supra is a case, wherein another learned Judge of the erstwhile Common High Court for the State of Telangana and State of Andhra Pradesh at Hyderabad upheld the Order of the learned Trial Judge dismissing the application filed by the petitioner/defendant under Order VI, Rule 17 CPC seeking amendment of written statement. In the said case, the application seeking amendment of written statement was filed 6 years after filing of the written statement. The learned Judge after referring to the Judgment of the Hon'ble Supreme Court in **Salem Advocates Bar Association, Tamil Nadu vs. Union of India**⁷ was not inclined to interfere with the Order of the Trial Judge. The relevant portion of the decision reads as follows:-

"Para 26: Order 6 Rule 17 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002, but with an added proviso to prevent application for amendment being 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. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application

⁷ AIR 2005 SC 3353

is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision."

So with the amendment of Order VI Rule 17 CPC and introduction of proviso, the petitioner seeking amendment after commencement of trial shall, convince the Court that inspite of due diligence, he could not have raised the matter before commencement of trial. So in my considered opinion, the yardstick for considering the amendment petition filed after commencement of trial is not only whether a separate suit on same facts and for same relief is not time barred as laid down in Sampath Kumar², but also whether the petitioner could show plausible cause that inspite of due diligence, he could not raise the matter before commencement of the trial. So to sum up, the amendment petition filed after commencement of trial no doubt can be considered, provided, the petitioner could establish that inspite of exercising due diligence he could not file the petition before commencement of the trial and a separate suit on same cause of action for the same relief could be maintainable. In the instant case, as already observed, the petitioner could not show any plausible cause for the inordinate delay. Hence the petition merits no consideration."

20. A conspectus of the above referred Case Law would go to show that exercise of due diligence is a '***Sine qua non***' for considering the application for the amendment of pleadings, after commencement of Trial and the Court has to come to a conclusion that even after exercise of said due diligence, the party could not have raised the matter before commencement of trial.

21. In the present case, the trial had already commenced P.W.1 was examined. However, his evidence was eschewed, as he was reportedly not maintaining good health. Thereafter, the evidence of P.W.2 was adduced. When the matter is posted for his cross examination, the application in question was filed. In such circumstances, proviso to Order VI, Rule 17 of CPC comes into play and unless the Court comes to a conclusion that in

spite of due diligence, the party could not have raised the matter before commencement of trial, the amendment sought for cannot be allowed. It may be recalled here that the Hon'ble Supreme Court in **M.Revanna's** case referred to supra held that the burden is on the person seeking amendment after commencement of trial to show due diligence on his part as contemplated under proviso to Order VI, Rule 17 of CPC.

22. Applying the above stated legal principles, it is to be tested as to whether the petitioner/defendant in the present case had satisfied the requirement in terms of proviso to Order VI, Rule 17 of CPC.

23. Admittedly, the respondent herein filed the suit in the year 2015 i.e., on 26.03.2015. Within a short time, the petitioner/defendant filed written statement on 30.08.2015. After a lapse of more than 6 years, the application in question was filed. The relevant portion of the affidavit filed in support of the said I.A may be extracted hereunder for ready reference:

"3. It is respectfully submitted that, the plaintiff filed the suit against the respondent society for evicting and other reliefs. It is submitted that in Para-4 of the plaint, it is specifically mentioned that the plaintiff society at the request of the defendant society gave license over the said property to the defendant to run colleges and later leased out the plaintiff schedule property to the defendant society at an annual rent of Rs.2,000/-.

4. It is submitted that, those allegations were not denied in the written statement filed by me. It is respectfully submitted that after going through the plaint, the plea about the license given by the plaintiff/petitioner to the respondent society did not take at the time of filing the written statement. Without that plea the cross examination of PW1 cannot be conducted. Therefore it is necessary to amend the written statement filed by me by adding Para 9(a) after Para 9 in the written statement as "From 1972 onwards the plaintiff/petitioner society gave license to the respondent/defendant

society to run the educational institution as ideal College of Arts and Science in the plaint schedule property and the said license is not revoked by the plaintiff/petitioner society at any point of time. Therefore, it is necessary to amend the written statement by adding Para 9(a) for the purpose of determining the real question in controversy between the petitioners and respondents.

5. Therefore, I pray the Hon'ble Court may be pleased to order for Judgment of Written Statement by adding Para 9(a) after Para 9 of the Written Statement and consequently amend the written statement so as to have full and fair trial in respect of the suit in the interests of the justice. Else I will be put to serious and irreparable loss."

24. Thus, it is clear, plea regarding exercise of due diligence and necessity of seeking amendment of written statement are conspicuously absent. Under such circumstances, the question of exercising due diligence or discharge of burden on the part of petitioner/defendant to the satisfaction or conclusion of the Court would not arise.

25. In the light of the above legal and factual position, this Court has no hesitation to hold that the petitioner/defendant-society failed to satisfy that it had exercised due diligence as contemplated under proviso to Order VI, Rule 17 of CPC. Therefore permission for amendment of written statement as sought for deserves no consideration and this Court is not inclined to accept the submissions made by the learned Senior Counsel in this regard.

26. Though the reasoning of the learned Trial Judge for rejecting the application is on a different footing and not very sound, the material on record and the consideration of the same by this Court would go to show that there is no exercise of due diligence by the petitioner and the Order dismissing the application seeking amendment is sustainable, even otherwise in view of the reasons assigned by this Court supra.

27. In **Rajesh Kumar Aggarwal's** case on which the learned Senior Counsel places reliance, the Hon'ble Supreme Court held that it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. In the present case, the respondent/plaintiff had set up his case *inter alia* with reference to lease between the parties, which was allegedly came to an end by March, 2013. In Para 6 of the written statement, the petitioner/defendant categorically averred as follows:-

"6. The allegations in the Plaint that the lease came to an end by end of March 2013 is absolutely false. The letter dt.17.04.2013 and the reply notice dt.30.05.2013 may be read as part of this Written Statement. It is humbly submit that as per the resolutions passed by the Plaintiff's Society the lease was extended from March 2013 and the Plaintiff has to execute a Registered lease deed in favour of the Plaintiff's Society as per the resolutions passed by the Plaintiff's Society. The Plaintiff's Society having full knowledge of the resolutions passed by the society suppressed the said resolution and filed the suit with false allegations as on 17.04.2013. The defendant has written a letter that the Plaintiff's Society has to extend the lease period."

In Para 9 in was further pleaded as follows:-

"9. The Plaintiff suppressed the resolution passed from time to time wherein it is clearly mentioned that the lease was extended in favour of the Defendant Society and a separate lease has to be executed in favour of the Defendant's Society. Purposefully, the Plaintiff filed the suit without filing the resolution books before the Hon'ble Court."

28. Thus, the pleadings are clear and it is for the respondent/plaintiff to prove his case with reference to the lease allegedly expired after March, 2013. In such circumstances, the amendment sought for is not necessary for determining the real issue in controversy, and even

assuming that the same is necessary, unless the petitioner/defendant satisfies that in spite of due diligence, he could not have raised the matter before commencement of trial, which he failed to establish as opined supra, the application for amendment, as sought for cannot be allowed.

29. For the foregoing reasons, this Court is of the considered opinion that the impugned Order rejecting the application seeking amendment of Written Statement need not be interfered with as the same does not suffer any irregularity or perversity.

30. The Civil Revision Petition is accordingly, dismissed. No Order as to costs.

As a sequel, miscellaneous applications, if any, pending shall stand closed.

NINALA JAYASURYA, J

Date: 27.06.2022

IS

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

Civil Revision Petition No.291 of 2022

Date: 27.06.2022

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