

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.BADHARUDEEN

TUESDAY, THE 24TH DAY OF MAY 2022 / 3RD JYAISHTA, 1944

OP(C) NO. 1830 OF 2021

AGAINST THE ORDER DATED 8.10.2021 IN I.A.4/2021 IN
O.S.183/2017 OF MUNSIF COURT, KARUNAGAPPALLY

PETITIONER/FIRST DEFENDANT:

ANZAR, AGED 55 YEARS
S/O.VAVAKUNJU, RESIDING AT KUTTIYIL VEEDU,
PULIYOORVANCHI SOUTH MURI, THODIYOOR VILLAGE,
KARUNAGAPPALLY TALUK.

BY ADVS.
B.KRISHNA MANI
DHANUJA M.S

RESPONDENTS/PLAINTIFF AND THE 2ND DEFENDANT:

- 1 SREEDEVIYAMMA, AGED 47 YEARS,
D/O.RETNAMMA, KAROOR VEEDU,
PULIYOORVANCHI KIZHAKKUM MURI,
THODIYOOR VILLAGE, KARUNAGAPPALLY TALUK,
KOLLAM DISTRICT-676 304.
- 2 RASHEEDA BEEVI, AGED 47 YEARS,
W/O.ANZAR, RESIDING AT KUTTIYIL VEEDU,
PULIYOORVANCHI SOUTH MURI, THODIYOOR VILLAGE,
KARUNAGAPPALLY TALUK, KOLLAM DISTRICT-676 304.

BY ADVS.
FOR R1 ELDHO PAUL
FOR R1 TESSY JOSE

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 18.05.2022,
THE COURT ON 24.05.2022 DAY DELIVERED THE FOLLOWING:

JUDGMENT

This Original Petition has been filed challenging the order dated 08.10.2021 in I.A.No.4/2021 in O.S. No.183/2017 pending before the Munsiff Court, Karunagappally, under Article 227 of the Constitution of India.

2. The petitioner is the 1st defendant in the above case. Original plaintiff and the 2nd defendant are the respondents.

3. Heard, Adv.B.Krishnamani appearing for the petitioner as well as Adv.Eldho Paul, appearing for the 1st respondent. Though notice served upon the 2nd respondent, nobody appeared or represented the 2nd respondent.

4. In this matter on 25.09.2021, the defendants 1 and 2 filed I.A.No.4/2021 to amend the written statement. In the affidavit in support of this petition, the petitioner raised contention that though in the written statement filed earlier, it was contended that the suit document produced by the plaintiff was not signed or executed by the 1st defendant, later enquiry

revealed that he had given a signed blank stamp paper in favour of one Biju M.V, when he borrowed Rs.1,00,000/- from Biju M.V, who had been conducting the concern 'Techno Enterprises'. When the above liability was discharged, the above signed blank stamp papers were not returned though the above said Biju agreed to return the same later. The further contention was that by using the said signed stamp paper, the plaintiff falsely created a promissory note and filed the present suit.

5. The plaintiff opposed the said contention.

6. The court below adjudicated the amendment application on merits and finally dismissed the application as per Ext.P5 order, which is under challenge.

7. While assailing Ext.P5 order, the learned counsel for the petitioner argued at length to convince this Court that defendant in a suit supposed to take inconsistent pleas and, therefore, the amendment sought for by the defendants by contending that the promissory note in dispute is one created in a signed blank stamp paper issued by the 1st defendant in favour

of one Biju M.V, when he had borrowed Rs.1,00,000/- from the above said Biju, should have been allowed by the trial court.

8. Repelling this contention, the learned counsel for the 1st respondent, plaintiff argued that the suit was filed in the year 2017 and the defendant filed written statement as early on 26.09.2017. In the written statement filed on 26.09.2017, the defendants raised contention that the promissory note produced by the plaintiff was not executed by the 1st defendant and the same was created after putting forged signature of the 1st defendant. Thereafter, when the case was listed on 08.10.2021, the present amendment application was filed on 25.09.2021 seeking amendment of the written statement by raising inconsistent pleas to the effect that the promissory note produced by the plaintiff was one created in the signed blank stamp paper issued by the 1st defendant in favour of one Biju M.V. Therefore, the learned counsel would submit that the petitioner wants to deviate from the wilful admission in the written statement earlier filed by substituting another defense by

admitting the signature in the promissory note. Therefore, the court below rightly dismissed the petition holding that the defendants introduced a totally different case, taking a U turn, in deviation of the original written statement and, therefore, the amendments sought, cannot be allowed.

9. Order 8, Rule 9 CPC deals with subsequent pleadings. No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.

10. It is true that Order 6 Rule 17 provides for amendment of pleadings and the intend behind amendment is nothing but to decide the real dispute between the parties. In the decision reported in [2009 KHC 4489 : 2009 (3) KLT SN 54] *P.A.Jayalakshmi v. H.Saradha and Others*, the Apex Court

held that it is the primal duty of the court to decide as to whether the amendment sought for is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6 Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court would have no jurisdiction at all to allow the amendment of the plaint.

11. As early in 1957, in the decision reported in [AIR 1957 SC 363 : 1957 KHC 600] ***Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil*** , it was held by the Apex Court that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in

the same position as if the pleading had been originally correct, but the amendment would be cause him an injury which could not be compensated in costs.

12. The said ratio has been followed in the subsequent decisions in [2008 (13) SCC 179] ***Bollepanda P.Poonacha and Another v. K.M.Madapa*** ; [2006 (12) SCC 119] ***State of A.P. v. Pioneer Builders*** ; [2006 (12) SCC 233] ***Steel Authority of India Ltd. v. Union of India*** ; [2006 (9) SCC 256] ***Himmat Singh v. ICI India Ltd.*** and [2009 (2) SCC 409] ***Vidyabai and Others v. Padmalatha and Another*** .

13. In a 3 Bench decision reported in [2019 (5) KHC 735 : 2019 (4) KLT 790], ***Ashok Kumar Kalra v. Wing Cdr. Surendra Agnihotri & Ors.***, while dealing with powers of the court under Order 6 Rule 6A, Order 6 Rule 17 and Order 8 Rule 9 of the Code of Civil Procedure, it was observed as under:

“Scope of discretion vested with the Court under O.6 R.17 and O.8 R.9 to allow for belated counter claims remains to be examined. It must be determined when it may be proper for the Court to refuse a belated counter claim, in spite of it being permissible within the scheme of O.8 R.6A and the Limitation Act, 1963. To ensure that the objective of

introducing the statutory amendments with respect to counter claims was not defeated, it was rightly held that a belated counter claim raised by way of an amendment to the written statement (under O.6 R.17) or as a subsequent pleading (under O.8 R.9) should not be allowed after the framing of issues and commencement of trial. Having considered the previous judgments of this Court on counter claims, the language employed in the rules related thereto, as well as the intention of the Legislature, I conclude that it is not mandatory for a counter claim to be filled along with the written statement. The Court, in its discretion, may allow a counter claim to be filed after the filing of the written statement, in view of the considerations mentioned in the preceding paragraph. However, propriety requires that such discretion should ordinarily be exercised to allow the filing of a counter claim till the framing of issues for trial. To this extent, I concur with the conclusion reached by my learned Brothers.”

14. In another decision reported in [2006 KHC 1060 : 2006(6) SCC 498: 2006 (3) KLT 953 : 2006 (3)], ***Baldev Singh & Ors. v. Manohar Singh & anr.***, the Apex Court considered the scope of amendment under Order 6 Rule 17 and Order 8 Rule 1 of C.P.C and held as under:

“16. ... inconsistent pleas can be raised by defendants in the written statement although the same may not be permissible in the case of plaintiff. In the case of M/s.Modi Spinning and Weaving Mills Co. Ltd. and another v. M/s. Ladha Ram and Co., 1976 (4) SCC 320, this principle has been enunciated by this Court in which it has been clearly laid down that inconsistent or alternative pleas can be made in the written statement. Accordingly, the High Court and the Trial Court had gone wrong in

holding that defendants/appellants are not allowed to take inconsistent pleas in their defence.”

15. Thus the legal position is not in *res integra* on the point that the status of the defendant in the matter of raising plea is different from that of a plaintiff and the defendant can take inconsistent and alternative pleas in the written statement.

16. However, at the same time, it is settled law that categorical and wilful admission made in the pleadings cannot be permitted to be withdrawn by way of amendment. In the decision reported in [2021 (5) KHC 740], ***Salim P.M v. Vasudevan Namboothiri & Ors.***, after referring various decisions on this point starting from 2005 onwards, this Court reiterated the said legal position.

17. The crucial question herein is whether denial of execution of promissory note is an admission as defined in Section 17 of the Evidence Act so that a defendant could not retract the same by amending the said admission. In this connection, it is relevant to refer another decision reported in [2011 (2) KHC 911 : ILR 2011 (3) Ker.82 : 2011 (3) KLJ 197],

Ruhaila Beevi & Ors. v. Suvarna Satyan. In the said decision, this Court considered a case similar to the facts of this case. To be precise, in this decision initially the defendant filed written statement denying execution of promissory note and the case of the defendant was total denial of the plaint allegations. When the Suit was listed for trial on 16.09.2010, on 08.09.2010, the defendant filed an application for amending the written statement contending that when the defendant had prized a chit run by the firm while receiving Rs.3 lakh as chitty prize, several blank papers were obtained by the firm and some of the blank papers had been misused to fabricate the promissory note and on the basis of which Suit was filed.

18. Herein also, the present application was filed on 25.09.2021 when the case was listed on 08.10.2021.

19. In ***Ruhaila Beevi & Ors. v. Suvarna Satyan*** (*supra*), after dealing with an admission referred under Section 17 of the Evidence Act, this Court held as under:

“Denial of a promissory note in the written statement cannot be treated as an admission by any sense of the term. The learned counsel for

the respondent submitted that admission is defined in S.17 of the Evidence Act and any statement which suggests any inference as to any fact in issue would amount to admission. Denial of the execution of the promissory note could not be such a statement coming within the purview of S.17 of the Evidence Act.”

20. In the said decision it was held further as under:

“It is true that there was delay on the part of the defendants in the matter of filing the application for amendment of the written statement. It is also true that the contentions are, to some extent, conflicting. But, it is well settled that inconsistent pleas can be taken by the defendants. I am of the view that the delay could be compensated in terms of costs. Taking into account the relevant facts and circumstances of the case, I am of the view that it is only proper to allow the application for amendment of the written statement, since it would advance the cause of justice and it would enable the Court to effectively and completely adjudicate upon the disputes involved in the case.”

Thus, the legal position emerges is that denial of promissory note in the written statement cannot be treated as an admission by any sense of the term. Denial of the execution of the promissory note could not be such a statement coming within the purview of S.17 of the Evidence Act. But it is well settled that inconsistent pleas can be taken by the defendants without withdrawing wilful admission raised in the written statement.

21. In ***Ruhaila Beevi & Ors. v. Suvarna Satyan*** (*supra*), this Court allowed the amendment application after holding so.

Thus it appears that the present amendment application with inconsistent pleas and without retracting wilful admission in the written statement, which is squarely covered by the decision in ***Ruhaila Beevi & Ors. v. Suvarna Satyan (supra)***, is liable to be allowed and the court below went wrong in dismissing the same.

22. Therefore, the impugned order stands set aside and the amendment stands allowed. The petitioner is directed to incorporate the amendment thereafter within 7 days from the date of receipt of a copy of this judgment.

23. The Original Petition stands allowed accordingly.

Since the Suit is of the year 2017, the trial court is directed to expedite the trial of this matter, at any rate, within a period of 3 months from the date of receipt of a copy of this judgment.

Sd/-

(A. BADHARUDEEN, JUDGE)

rtr/

APPENDIX OF OP(C) 1830/2021

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE PLAINT O.S.183/2017
BEFORE THE MUNSIFF'S COURT,
KARUNAGAPPALLY DATED 11-04-2017.
- EXHIBIT P2 TRUE COPY OF THE WRITTEN STATEMENT
DATED 26-09-2017 IN O.S.183/2017
BEFORE THE MUNSIFF'S COURT,
KARUNAGAPPALLY.
- EXHIBIT P3 TRUE COPY OF THE APPLICATION, I.A
4/2021 IN O.S.183/2017 BEFORE THE
MUNSIFF'S COURT, KARUNAGAPPALLY DATED
NIL.
- EXHIBIT P4 TRUE COPY OF THE PROMISSORY NOTE DATED
14-4-2016.
- EXHIBIT P5 TRUE COPY OF THE ORDER DATED 8-10-2021
IN I.A.4/2021 IN O.S 183/2017 BEFORE
THE MUNSIFF'S COURT, KARUNAGAPPALLY.