A S. MALLA REDDY

v.

M/S. FUTURE BUILDERS CO-OPERATIVE HOUSING SOCIETY & ORS.

(Civil Appeal No. 3914 OF 2013)

B APRIL 18, 2013

[P. SATHASIVAM AND M.Y. IQBAL, JJ.]

Code of Civil Procedure, 1908 – Or.VI, rr.16 and 17 and C *Or.VIII, r.9 – Suit for declaration of title and for perpetual injunction – Petition filed by the defendants-appellants u/ Or.VI, r.17 seeking amendment of the written statement – Challenge to – Held: The relief sought for by the defendants in the petition u/Or.VI r.17 was elaborately dealt with in two* D *earlier petitions filed by defendants u/Or.VI, r.16 and Or.VIII, r.9 which came to be rejected – Filing of petition by the defendants u/Or.VI, r.17 after about 13 years when the hearing of the suit had already commenced and some of the witnesses were examined, was wholly misconceived – Filing* E *of subsequent application for the same relief was an abuse of the process of the Court – Abuse of Court.*

Code of Civil Procedure, 1908 – Or.VI, r.16 and Or.VI, r.17 – Distinction between – Discussed.

F **The plaintiff-respondent Society filed a suit for declaration of title in respect of property and for perpetual injunction restraining the defendants-appellants from interfering with possession. The defendants filed written statement admitting the claim of the plaintiff and praying** G **to the court to decree the suit. Subsequently, the defendants filed petition under Order VI Rule 16 CPC praying that the earlier written statement be struck out since the same was against their interests. Another petition was filed by the defendants under Order VIII Rule**

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9 and Order VI Rule 5 of CPC seeking leave of the court to permit them to file a detailed written statement. The trial court dismissed both the petitions holding that the defendant-appellants cannot be allowed to substitute their written statement in the suit whereunder there was an admission of the claim of the plaintiff-Society. The defendant- appellants challenged the said order but lost the claim upto this Court. Thereafter, the defendants-appellants filed petition under Order VI Rule 17 CPC seeking amendment of the written statement. The amendment petition was allowed by the trial court and against that the plaintiff-Society preferred revision petitions. The High Court allowed the revision petitions and set aside the order of the trial court, and therefore the instant appeals.

Dismissing the appeals, the Court

HELD: 1. Order VI Rule 16 CPC deals with the amendment or striking out of the pleadings, which a party desires to be made in his opponent's pleadings. In other words, the plaintiff or the defendant may ask the court for striking out pleadings of his opponent on the ground that the pleadings are shown to be unnecessary, scandalous, frivolous or vexatious. This Rule is based on the principle of *ex debito justitia.* The court is empowered under this Rule to strike out any matter in the pleadings that appears to be unnecessary, scandalous, frivolous or vexatious or which tends to prejudice, embarrass or delay the fair trial of the suit. On the other hand, Order VI Rule 17 CPC empowers the court to allow either party to alter or amend his own pleading and on such application the court may allow the parties to amend their pleadings subject to certain conditions enumerated in the said Rule. [Para 22 and 23] [249-E-H; 250-A]

2. In the instant case, although the defendant-appellants filed the petition for striking out their own

A pleading i.e. written statement, labelling the petition as under Order VI Rule 16 CPC, but in substance the application was dealt with as if under Order VI Rule 17 CPC inasmuch as the trial court discussed the facts of the case and did not permit the defendants to substitute
B the written statement whereunder there was an admission of the suit claim of the plaintiff-Society. The trial court while rejecting the aforementioned petition held that the defendant-appellants cannot be allowed to substitute their earlier written statement filed in the suit
C whereunder there was an admission of the claim of the plaintiff-Society (respondent). Similarly in the revision filed by the defendants, the High Court considered all the decisions referred by the defendants on the issue as to whether the defendants can withdraw the admission
D made in the written statement and finally came to the conclusion that the defendant-appellants cannot be allowed to resile from the admission made in the written statement by taking recourse to Order VIII Rule 9 or Order VI Rule 16 CPC by seeking to file a fresh written statement. In the aforesaid premises, filing of a fresh
E petition by the defendants under Order VI Rule 17 CPC after about 13 years when the hearing of the suit had already commenced and some of the witnesses were examined, is wholly misconceived. The High Court in the impugned order has rightly held that filing of subsequent
F application for the same relief is an abuse of the process of the court. The relief sought for by the defendants in a subsequent petition under Order VI Rule 17 CPC was elaborately dealt with on the two earlier petitions filed by the defendant-appellants under Order VI Rule 16 and
G Order VIII Rule 9 CPC and, therefore, the subsequent petition filed by the defendants labelling the petition under Order VI Rule 17 CPC is wholly misconceived and was not entertainable. [Para 24] [250-B-H]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3914 of 2013. A

From the Judgment & Order dated 28.12.2007 in CRP No. 5139/2007 of the High Court of A.P. at Hyderabad.

WITH B

C.A. Nos. 3915 and 3916 of 2013.

Dushyant A. Dave, Huzefa A. Ahmadi, L.Nageshwar Rao, P.S. Narasimha, S. Udaya Kumar Sagar, Bina Madhavan, C Anindita Pujari, Anand Kumar Kapoor (for Laywer's Knit & Co.), A. Venayagam Balan, M.P. Shorawala, Sridhar Potaraju, Prabhakar, Gaichangpou Gangmei, Ananga Bhattacharyya, A. Venayagam Balan, Radha Shyam Jena, John Mathew for the appearing parties. D

The Judgment of the Court was delivered by

M.Y. EQBAL, J. 1. Leave granted.

2. The defendants (appellants herein) have assailed the E common order dated 28.12.2007 passed by a learned Judge of the Andhra Pradesh High Court, whereby the Revision Petitions filed by the plaintiff-respondent (M/s Future Builders Coop Society) under Article 227 of the Constitution of India have been allowed and the order passed by the trial court F allowing amendment in the written statement has been set aside.

3. The facts of the case lie in a narrow compass.

4. The plaintiff-respondent M/s. Future Builders Co-op. G Housing Society (in short "the plaintiff Society") filed a suit against the defendant-appellants for declaration of title in respect of the property mentioned in the schedule of the plaint (in short "the suit property") and for perpetual injunction restraining the defendants from interfering with possession. The H

A case of the plaintiff-Society is that the Society is a registered Society under the Andhra Pradesh Co-operative Societies Act with the object to acquire or purchase land for the benefit of its members and render it fit for habitation. The Society was founded by several promoters including the first defendant-S. B Malla Reddy (appellant herein). The plaintiff's further case is that for the purpose of registration under Co-operative Societies Act, it was necessary to show to the Registrar that they have entered into an agreement for purchase of land for the benefit of its members. It was alleged that before the Society was C registered, its promoters identified the suit land as fit for the purpose and negotiated with the owner and entrusted the work to the first defendant for effecting purchase after measurement and a sum of Rs. 10,000/- was paid to him. The first defendant alleged to have executed an agreement on 8.3.1978 in favour D of the Chief Promoter of the Society, *inter alia,* agreeing that the first defendant will get the land measured and obtain legal opinion and pay the money to the land owner. It was agreed that the sale deed would be obtained in the name of the first defendant and a patta would be got transferred in his name or of his nominee for the benefit of the Society. The Society was E registered on 28.08.1981 and defendant No.1 having obtained a Sale Deed dated 02.01.1979 and transfer of patta in the name of himself and defendant Nos. 2 to 4 (appellants herein), who are his wife and sons in respect of the suit property, had delivered possession to the Society and they further agreed to F secure the patta in the name of the plaintiff-Society. A Memorandum of Agreement dated 16.09.1981 was also executed to the effect that the plaintiff would hold the land as owner. It was alleged by the plaintiff-Society that the defendants, in spite of several requests and demands, were postponing the G transfer of patta in respect of the suit property in its name on one pretext or the other. Hence, suit.

5. On being summoned, the defendants appeared and filed a joint written statement on 19.01.1995 admitting the claim H of the plaintiff stating that after filing of the suit there was a

mediation wherein the dispute was settled and, accordingly, a sum of Rs. 1,00,000/- was paid to them and they were then willing to transfer the patta in respect of the suit property in favour of the plaintiff who had already acquired title. The defendants, therefore, prayed to the court to decree the suit.

6. Controversy started when the defendants after filing of the written statement and admitting the claim of the plaintiff filed a petition being I.A. No.2217 of 1995, later renumbered as I.A. No.162 of 2000, seeking permission to change their advocates on the ground that they were acting detrimental to their interest by filing written statement contrary to the instructions. The said petition was objected by the plaintiff. The trial court by order dated 07.02.2000 permitted the defendants to change their advocates without prejudice to the rights of the parties. Thereafter, defendants filed another petition under Order VI Rule 16 of the Code of Civil Procedure (CPC) being I.A. No.415 of 2000 on 28.02.2000 seeking leave of the court to strike out the pleadings in the written statement or to expunge the written statement and to permit them to file a detailed written statement. It was alleged that the written statement filed earlier was in collusion with the plaintiff contrary to the instructions given by them to their advocate. Another petition was filed by the defendants being I.A. No.416 of 2000 under Order VIII Rule 9 and Order VI Rule 5 of CPC seeking leave of the court to permit them to file a detailed written statement. Some more developments took place during the pendency of those petitions. The youngest son of the first defendant filed a petition being I.A. 1819 of 2000 seeking leave of the court to implead him as party to those two interlocutory petitions which was, however, allowed and the said son was brought on record.

7. The trial court after hearing the parties dismissed both the petitions being I.A. Nos.415 and 416 of 2000 by common order dated 04.01.2002. The defendant- appellants challenged the said order by filing Civil Revisions in the High Court being CRP Nos.502 and 505 which were ultimately dismissed on

A 18.09.2002. The defendant-appellants then filed review petition being Review CMP No. 2102 of 2003 which was also dismissed on 25.06.2003. The defendants then preferred appeals to this Court in Civil Appeal Nos. 7940 to 7942 of 2004 which were also dismissed on 15.03.2007.

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8. After the defendants lost the claim upto this Court and their prayer was refused, a fresh petition under Order VI Rule 17 CPC was filed seeking leave of the Court to amend the written statement. The said application was registered as I.A. SR No. 593 of 2007. The trial court rejected the said application C by a non-speaking order. The order was challenged in the High Court in Revision which was disposed of with the directions to the trial court to register the application and dispose of the same by passing a reasoned order. The trial court in compliance of the aforesaid directions finally heard the D amendment petition and by order dated 27.09.2007 allowed the petition permitting the defendants to amend the written statement.

9. The plaintiff-Society challenged the aforesaid order E allowing amendment of the written statement by filing revision petitions before the High Court. The said revision petitions filed by the plaintiff-Society under Article 227 were heard at length and finally those petitions were allowed by the High Court vide order dated 28.12.2007 and the order of the trial court allowing F amendment of the written statement was set aside. Hence, these appeals by special leave filed by the defendant-appellants.

10. We have heard the learned counsel appearing for the parties. Mr. Dushyant A. Dave, Senior Advocate and Mr. G Huzefa A. Ahmadi, Senior Advocate appearing for the defendant-appellants drew our attention to various decisions of this Court for the proposition that the admission made in the written statement can be withdrawn and inconsistent plea can be taken in the written statement. Learned counsel also tried H to impress us that the order passed on the petition under Order

VI Rule 16 and Order VIII Rule 9 will not operate as *res judicata* on the subsequent application filed under Order VI Rule 17 of CPC. Learned counsel submitted that the High Court has not correctly appreciated the settled principle of law and has passed the impugned order without considering the entire gamut of the case.

11. On the other hand, Mr. L. Nageswara Rao, learned Senior Advocate appearing for the plaintiff-Society (respondent herein) firstly contended that the application for amendment is liable to be rejected on the sole ground that it was filed 13 years after the institution of the suit and that too when the trial of the suit had begun and the plaintiff's witness was cross- examined. Mr. Rao contended that the disruptive plea cannot be allowed to be taken by way of amendment in the written statement. According to the learned counsel, the ground taken by the defendants for amending the written statement has already been discussed in the earlier petition filed under Order VI Rule 16 and that under Order VIII Rule 9 and Order VI Rule 5 CPC. The said applications were rejected by the trial court and the order was affirmed by this Court also.

12. Before appreciating the rival contentions, we would like to first reproduce the written statement filed by the defendant-appellants in the suit. The written statement contains of only four paragraphs, which are as under:-

> "WRITTEN STATEMENT FILED UNDER ORDER 8 RULE 1 CVIL PROCEDURE CODE by Defendants 1 to 4
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> 1. The first defendant was entrusted with the work of purchase of the land for the Plaintiff's Society before its incorporation. Since there was delay in the registration and incorporation of the Society, the suit land was purchased in the name of the First Defendant who is also one of the Promoters from Sri Mohammad Sarvar and others and the patta was transferred in the name of these defendants. These defendants held it for the benefit of the plaintiffs and

A after the Society was incorporated on 28.8.2001, delivered the land to the plaintiff and also executed a Memorandum dated 16.9.1981 which was ratified by the Plaintiff Society.

2. One of the terms of the Memorandum was that the
B plaintiff agreed to pay the expenses incurred by the defendants for the development and protection of the land. Since the plaintiff postponed the settlement of accounts, these defendants did not apply for transfer of patta in favour of the plaintiff.

C 3. After the suit is filed there is mediation and settlement and a sum of Rs. 1,00,000/- (Rupees one lakhs only) is paid as full quid to these defendants and these defendants are willing to transfer of the patta in favour of the plaintiff who has already acquired the title as stated in the plaint.

D

4. Hence the suit may be decreed as prayed for but without costs.

Defendants

E 1.

2.

3.

F 4.

Counsel for the Defendants 1 to 4

Verification

G The facts stated above are true to the best of our knowledge, belief and information."

13. From bare perusal of the written statement, it is manifestly clear that the defendant-appellants categorically
H admitted not only the case of the plaintiff but also acknowledged

receipt of Rs. 1,00,000/- and their willingness for transfer of patta in favour of the plaintiff. The defendants, on the basis of such admission, prayed to the court that the suit be decreed but without any costs. A

14. As noticed above, the defendant-appellants filed application on 28.02.2000 under Order VI Rule 16 of CPC being I.A. No. 415 of 2000 praying that the earlier written statement be struck out since the same was against their interests. Another application being I.A.No.416 of 2000 under Order VIII Rule 9 CPC was filed praying that the defendants may be permitted to file detailed written statement in the suit since the earlier written statement filed by them was against their interests. Both applications were taken up together by the trial court and disposed of by common order dated 04.01.2002. The trial court while rejecting the aforementioned two applications held that the defendant-appellants cannot be allowed to substitute their written statement in the suit whereunder there was an admission of the claim of the plaintiff-Society. While rejecting the applications, the trial court elaborately discussed the facts of the case and considered the arguments advanced by the lawyers as also the decisions relied upon by them with regard to withdrawal of admission by filing fresh written statement. B C D E

15. At this stage, we must mention that even before the suit was instituted by the plaintiff-Society, the defendants had filed a caveat duly supported by affidavit through the same advocate wherein the entire claim of the plaintiff-Society was admitted. The only grievance made in the caveat was that without settlement of the amount due as agreed under the Memorandum of Agreement, the plaintiff-Society was trying to lay out the suit land and to dispose of the same without paying the amount due. The relevant paragraphs of the trial court order dated 04.01.2002 are quoted hereinbelow (from pages 165-170 of paper book): F G

"16. The learned counsel for the petitioner, referring to the H

A earlier suit litigation between the defendants and others, contended that there is no reason for the defendants to admit the suit claim of the plaintiffs society but for the reasons that fraud was played upon the defendants in filing their written statement. The learned counsel for the B petitioner relying upon the decision in BHIKAJI KESHAO JOSHI AND ANOTHER vs. BRIJLAL NANDLAL BIYANI and OTHERS (AIR 1955 SC 610) contended that the Court can order strike out of the written statement and permit the defendants to file substituted written statement with specific C pleadings. In the said decision, the petitioner in the said election petition made vague allegations of corrupt practices of the respondent and in the said circumstances it was found that the court can exercise its powers and call for better particulars. It is not the case of the petitioners – D defendants herein that their written statement pleadings are vague and that therefore, to furnish better particulars the earlier written statement filed on their behalf may be struck out and they may be permitted to file a detailed substituted written statement. In the written statement filed on behalf of the defendants in the suit OS No.408/94 (OS E 1 of 2000 on the file of this court) the defendants had categorically admitted the entire suit claim and have further mentioned that they had no objection for the suit to be decreed. No doubt, it is the contention of the petitioners that their advocate Sri Sunil Kumar obtained their F signatures on blank paper and that is contrary to their instructions he prepared the written statement in collusion with the plaintiff- society admitting the suit claim for which they had complained against the said advocate to Bar Council of Andhra Pradesh. Ex.B.1 is the Xerox certified G copy of caveat number 178/94 on the file of IIIrd Additional Judge, City Civil Court, against the plaintiff society on 07.07.1994. In the said caveat petition also, the defendants in the suit admitted the entire claim of the plaintiff-society but the grievance of the defendants under that caveat was H without settlement of the amount due as agreed under the

memorandum of agreement, the plaintiff society was trying to lay out the suit land and to dispose it of without paying his amount and that, therefore, if any injunction suit is filed against him with respect to the said property, he may be given notice. There is no explanation given by the petitioners herein in these petitions with respect to the said admission of the defendants herein in the said caveat petition. In fact, it was pleaded in the written statement in question by the defendants that after the suit was filed there was mediation and sum of Rs. 1,00,000/- was paid to them towards settlement. No doubt the said caveat petition was also filed by the same advocate Sri Sunil Kumar but in the affidavit filed in support of these two petitions, the 1st defendant did not explain about his admissions in the said caveat petition with respect to the suit schedule properties in favour of the plaintiff society.

17. The learned counsel for the 1st defendant-plaintiff Society relying upon the decisions in *MODI SPINNING AND WEAVING MILLS COMPANY LIMITED AND ANOTHER VS. M/S. LADHA RAM AND COMPANY* (AIR 1977 Supreme Court 680), *B.K. NARAYANA PILLAI AND PARAMESWARAN PILLAI AND ANOTHER* (2000) 1 Supreme Court Cases 712) and *HEERALAL AND KALYAN MALAND AND OTHERS* (1998) 1 Supreme Court Cases 278) contended that any amendment introducing entirely different new case and seeking to displace the plaintiff the benefit completed from the admission made by the defendants in the written statement, is not permissible. In the decision in *MODI SPINNING AND WEAVING MILLS COMPANY LIMITED VS. M/S LADHA RAM AND COMPANY* (AIR 1988 Supreme Court 680) by means of an amendment the defendant wanted to introduce an entirely different case. In the facts and said circumstances, it was held that the defendants cannot be allowed to change completely the case made out in their written statement and to substitute

A an entirely different new case and that if such amendments are allowed the plaintiffs will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. In *HEERALAL vs. KAYALAN MAL AND OTHERS* (1998) 1 Supreme Court Cases 278, and B *HEERALAL vs. KAYALAN MAL AND OTHERS* (AIR 1998 Supreme Court 618), it was held that once the written statement contains an admission in favour of the plaintiff, the amendment of such admission of the defendants cannot be allowed to be withdrawn and such withdrawal C would amount to totally displacing the case of the plaintiff which would cause him irretrievable prejudice. In B.K. Narayana Pillai and Parameshwaran Pillai and Another (2000) 1 Supreme Court Cases 712, it was held though the defendant has a right to take alternative pleas in defence by way of amendment, it would be subject to D qualification that (i) Proposed amendment should not result in injustice to the other side; (ii) any admission made in favour of plaintiff should not be withdrawn; and (iii) inconsistent and contradictory allegations which negate admitted facts should not be raised. Under the present E petitions, the petitioners – defendants are intending to take away the admission made by them in regard to the suit claim of the plaintiff society. The law is that no additional written statement should not set up a totally new case or state facts at direct variance with the original written F statement so as to completely change the issue in the case. This is not a case where the defendants are intending to take alternative pleas or that they are intending to explain the vague pleadings made by them in their written statement filed. This is also not a petition to file G additional written statement but as a petition to substitute the original written statement to get over the admissions made in favour of the plaintiff society. There is no material placed before the court to substantiate their affidavit. As already stated, the documents filed are not helpful to H support the affidavit of the petitioner in regard to the

allegations made against their previous advocate so as to request the court to permit them to file a detailed written statement, in the place of their earlier written statement in which they had admitted the entire claim of the plaintiff society. A perusal of written statement which is sought to be substituted in the place of the earlier written statement discloses that the defendants plead an entire new case against the admissions made by them in the written statement. In view of the settled law of the Apex Court the petitioners cannot be permitted to request the court to strike out the earlier written statement filed by them or to permit them to substitute a fresh written statement in contrary to the admission made by them in their written statement.

18. No doubt, the petitioner had filed criminal proceedings against the said Advocate and others and copies of those criminal proceedings are filed in this petition. Admittedly, the said Criminal Case is pending. Moreover, it was subsequent to the filing of I.A. 2217/95. It is well–established principle of law that the decisions of the Civil Courts are binding on the criminal courts and the converse is not true (vide decision in Karamchand vs. Union of India (AIR 1977 Supreme Court 1244). The plaintiff society is not a party to the earlier civil proceedings, which are filed in this petition on the behalf of the Petitioners. Therefore, those documents, which are filed on behalf of the petitioners – defendants are not binding on the first respondent – plaintiff society. The revenue records, filed are also not helpful for the petitioners in support of their contention in this petition. Whether the chief promoter was by the date of the agreement was a minor as contended by the petitioners is also not a question relevant for the purpose of this petition. Thus, this court holds that the documents filed on behalf of the petitioner do not advance the claim of the petitions. For the foregoing reasons and in view of the law enunciated by the Hon'ble Apex Court,

A the petitioners–defendants cannot be permitted to substitute the earlier written statement filed by them in the suit whereunder there was an admission of the suit claim of the plaintiffs society, by way of an entirely new written statement taking contradicting pleas. Thus this court does
B not find any merits in the petitions.

19. In the result, the petitions are dismissed but without costs."

16. On the basis of the findings recorded by the trial court, defendants' two petitions under Order VIII Rule 9 and Order VI Rule 16 CPC were dismissed holding that the defendants cannot be permitted to substitute the earlier written statement wherein there was an admission of the suit claim of the plaintiff-Society.

17. Aggrieved by the aforesaid order, the defendants preferred revision petitions before the High Court. Before the High Court, it was argued that though some admissions were made in the written statement, the same can be withdrawn by filing a fresh detailed written statement. Dismissing the said revision petitions, the High Court in its order dated 18.09.2002 (pages 184 to 186 of paperbook) observed:-

"The court below had elaborately discussed this aspect I agree with the reasoning and finding thereof given by the court below on this aspect and I hold that they are perfect and valid.

Before the court below the defendant relied on a Judgment reported in Bhikaji Keshao Joshi and another vs. Brijlal Nadanlal Biyani and others (AIR 1955 SC 610) and contended that the court can order striking out of the written statement and permit the defendants to file substituted written statement with specific pleadings. The court below rightly distinguished the same and held that it is not applicable.

The lower appellate court while dismissing the I.As. relied on a judgment of the Apex Court reported in *HEERALAL vs. KAYALAN MAL AND OTHERS* (AIR 1998 SC 618), wherein it was held that once the written statement contains an admission in favour of the plaintiff, the amendment of such admission of the defendants cannot be allowed to be withdrawn and such withdrawal would amount to totally displacing the case of the plaintiff which would cause him irretrievable prejudice. In another decision of the Supreme Court referred to by the Court below in *B.K. NARAYANA PILLAI vs. PARAMESHWARAN PILLAI AND ANOTHER* (2000 (1) SCC 712) it was held that though the defendant has a right to take alternative pleas in defence by way of amendment, it would be subject to qualifications which are (1) proposed amendment should not result in injustice to the other side and (2) any admission made in favour of the plaintiff should not be withdrawn and (3) inconsistent and contradictory allegations which negate admitted facts should not be raised.

In the present case the question now is whether the admission made by the defendant in favour of the plaintiff can be withdrawn and the answer in the language of the apex court, is 'not permissible'.

As already discussed the admissions made in the written statement are absolutely matching with the original stand taken by the 1st defendant in the affidavit filed to his caveat petition and also with the pleadings and the only dispute raised is with regard to payment of money to the defendant. In such a case, I am of the strong view that the defendant had not approached the court with clean hands in filing the present I.As.

It has to be further noticed that the allegations made against the counsel are not established so far. Mere filing of a complaint before the police or before the Bar Council

A of India, in the circumstances like the present one would only jeopardize the decency and dignity of the profession of the Advocate. This attitude of making wild and baseless allegations against the counsel has to be dissuaded by all means. However, this observation shall not be understood B as an opinion expressed by this court on the proceedings already initiated and pending against the said counsel. To put in a different way, the original stand of the defendant as stated in the affidavit filed in support of the caveat petition, demolishes or cuts across the very basis for filing C the present I.As. I am of the further view that if these types of allegations are made without substantiating them and if they are encouraged, it would lead to a situation where litigants with false cases would resort to smudging the career of genuine or innocent advocates. The conduct on D the part of the defendant is palpably mischievous and this court cannot lend any kind of support to a litigant like the defendant, who has approached the court with unclean hands.

It is also brought to the notice of this Court that in E another suit which is not connected with the present suit, the defendant resorted to similar type of allegations against another counsel, and of course the trial court did not take into consideration those allegations.

F The court below had discussed in detail all the aspects and dismissed the I.As. with cogent and convincing reasons and I do not find any valid ground to interfere with the same. Accordingly, I pass the order as under.

G The revisions petitions are dismissed with costs."

18. The relevant paragraphs of the orders passed by the trial court and the High Court have been quoted hereinbefore mainly for the reason that while considering the petitions under H Order VIII Rule 9 and Order VI Rule 16 both the courts have

also gone into the question as to whether those admissions could be withdrawn by permitting the defendants to file a fresh written statement or by striking out of the earlier written statement.

19. Aggrieved by the above said orders, the appellants moved this Court in Civil Appeal No.7940-7942 of 2004. Finding no merit, this Court dismissed the appeals by order dated 15.03.2007.

20. Instead of participating in the suit, the defendant-appellants filed another petition purported to be under Order VI Rule 17 CPC seeking amendment of the written statement. The said amendment petition was allowed by the trial court and against that the plaintiff-Society preferred revision before the High Court. The High Court by passing the impugned order dated 28.12.2007 allowed the revision petitions and set aside the order passed by the trial court. The High Court held as under :-

> "15. The ratio in *THE UNITED PROVINCES ELECTRIC SUPPLY CO. LTD.* case (AIR 1972 SC 1201) that decision on any particular point given in an order of remand does not operate as *res judicata* in an appeal filed against the final order passed after the remand; does not apply to the facts of this case because there is no 'order of remand' in this case as plaintiff is not relying on any of the observations in an 'order of remand' to contest the applications made by the defendants.
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> 16. In view of the ratio in *SATYADHYAN GHOSAL* case (AIR 1960 SC 941), *ARJUN SINGH* case (AIR 1964 SC 993) and *THE UNITED PROVINCES ELECTRIC SUPPLY CO. LTD.* case (..supra) successive applications for the same relief cannot be permitted, and they can even be rejected as an abuse of the process of Court.
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> 17. It is contended by the learned counsel for the

A defendants that subsequent to the filing of I.A. No.416 of 2000, defendants came to know through the report of an expert that the written statement filed on their behalf was typed on the same typewriter on which the plaint was typed. In the common order challenged in these revisions, B the trial Court considered that contention and held that that contention has to be decided at the time of trial, but cannot be considered at this stage. For the reasons given by the trial court, that finding cannot be said to be erroneous.

C 18. As rightly contended by the learned counsel for the plaintiff, the trial Court which agreed with the contention of the plaintiff that defendants cannot by invoking the plea of fraud seek the amendment sought, allowed the petitions only on the basis of the observations made in *UDAY SHANKAR TRIYAR V. RAM KALEWAR PRASAD* D *SINGH* AIR 2006 SC 269. In the very same judgment the apex Court held that procedure, a hand maiden to justice, should never be made a tool to carry justice or perpetuate injustice by any oppressive or punitive use. The trial Court without keeping in view the fact the defendants cannot E repeatedly file the petition for the same relief which was negatived earlier, in a different form by quoting different provisions of law, thought it fit to allow the petitions and thereby virtually set at naught the order of dismissal of I.A.Nos.415 and 416 of 2000 passed by it earlier which F order was confirmed by this Court and the Apex Court also."

21. Before going into the merits of the case, we would like to refer two of the provisions viz. Order VI Rule 16 and Order VI Rule 17 CPC which are involved in the instant case. These G two provisions read as under:-

"16. Striking out pleadings— The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading—

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(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trail of the suit, or

(c) which is otherwise an abuse of the process of the Court.]

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."

22. Order VI Rule 16 CPC has been substituted by the CPC (Amendment) Act, 1976. This provision deals with the amendment or striking out of the pleadings, which a party desires to be made in his opponent's pleadings. In other words, the plaintiff or the defendant may ask the court for striking out pleadings of his opponent on the ground that the pleadings are shown to be unnecessary, scandalous, frivolous or vexatious. This Rule is based on the principle of *ex debito justitia.* The court is empowered under this Rule to strike out any matter in the pleadings that appears to be unnecessary, scandalous, frivolous or vexatious or which tends to prejudice, embarrass or delay the fair trial of the suit.

23. On the other hand, Order VI Rule 17 CPC empowers the court to allow either party to alter or amend his own pleading and on such application the court may allow the parties to

A amend their pleadings subject to certain conditions enumerated in the said Rule.

24. Although the defendant-appellants filed the petition for striking out their own pleading i.e. written statement, labelling the petition as under Order VI Rule 16 CPC, but in substance the application was dealt with as if under Order VI Rule 17 CPC inasmuch as the trial court discussed the facts of the case and did not permit the defendants to substitute the written statement whereunder there was an admission of the suit claim of the plaintiff-Society. The relevant portion of the order quoted hereinabove reveals that the trial court while rejecting the aforementioned petition held that the defendant-appellants cannot be allowed to substitute their earlier written statement filed in the suit whereunder there was an admission of the claim of the plaintiff-Society (respondent herein). Similarly in the revision filed by the defendants, the High Court considered all the decisions referred by the defendants on the issue as to whether the defendants can withdraw the admission made in the written statement and finally came to the conclusion that the defendant-appellants cannot be allowed to resile from the admission made in the written statement by taking recourse to Order VIII Rule 9 or Order VI Rule 16 CPC by seeking to file a fresh written statement. In the aforesaid premises, filing of a fresh petition by the defendants under Order VI Rule 17 CPC after about 13 years when the hearing of the suit had already commenced and some of the witnesses were examined, is wholly misconceived. The High Court in the impugned order has rightly held that filing of subsequent application for the same relief is an abuse of the process of the court. As noticed above, the relief sought for by the defendants in a subsequent petition under Order VI Rule 17 CPC was elaborately dealt with on the two earlier petitions filed by the defendant-appellants under Order VI Rule 16 and Order VIII Rule 9 CPC and, therefore, the subsequent petition filed by the defendants labelling the petition under Order VI Rule 17 CPC is wholly misconceived and was not entertainable.

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25. After giving our full consideration on the matter, we do not find any error in the impugned order passed by the High Court. Hence, these appeals have no merit and are accordingly dismissed. No order as to costs. A

B.B.B. Appeals dismissed. B