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**(1993) 07 AP CK 0045**

**Andhra Pradesh High Court**

**Case No:** Civil Revision Petition No. 1971 of 1991

S.M. Mustafa

APPELLANT

Vs

H.M. Seshagiri Rao

RESPONDENT

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**Date of Decision:** July 3, 1993

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17, 115

**Citation:** (1993) 3 ALT 19

**Hon'ble Judges:** M.N. Rao, J

**Bench:** Single Bench

**Advocate:** L. Sadasiva Reddy and P. Bala Krishna, for the Appellant; A. Bhaskarachary, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

M.N. Rao, J.

This revision petition is directed against the order of the learned Principal Dist. Munsif, Anantapur made in I.A. No. 393/91 in OS.371/88 dismissing the application of the petitioner-plaintiff for amendment of the plaint. The suit was instituted on the foot of a promissory note said to have been executed by the defendant-respondent for a sum of Rs. 5,000/- with interest calculated at 30% per annum. In the plaint, it was averred in paragraph 3:

"The above defendant on 13-5-85 (sic. 13-8-85) has borrowed a sum of Rs. 5,000/- in cash from the above plaintiff and executed the promissory note in favour of the plaintiff agreeing to repay the same with interest at 30% per annum."

After the issues were framed, the plaintiff was examined in chief and the suit pronote was marked as Ex.A-1. Thereafter, the defendant filed an application seeking amendment of the written statement so as to enable him to take the plea

that the suit pronote was insufficiently stamped and that application was allowed. Subsequently, I.A. No. 393/91 was filed by the petitioner herein to amend the plaint by adding paragraph 3 (a) which is in the following terms:

"The above defendant borrowed a sum of Rs. 5,000/- in cash from the plaintiff in the morning agreeing to repay the same with interest at 30% per annum and late in the evening on 13-8-85 the defendant came and executed the pronote in favour of the plaintiff affixing Rs. 0-20 paise stamp only as the defendant and the plaintiff both were under the impression that 0-20 paise stamp is the sufficient stamp only. As the said pronote is insufficiently stamped, the plaintiff is basing his claim on the original cause of action as the plaintiff lent the money in the morning and also to add "in the morning" in the second line and "late in the evening on 13-8-85" in the 3rd line of para-7".

That was opposed by the defendant-respondent contending that it was not open to the petitioner to introduce a new cause of action based upon the alleged lending in the morning and obtaining the promissory note in the evening. The learned Dist. Munsif dismissed the application observing that the petitioner when examined as P.W.1 did not say anything about his lending money in the morning and obtaining the promissory note in the evening and, therefore, he should not be permitted to amend the plaint with the proposed amendment.

2. Sri Sadasiva Reddy, learned counsel for the petitioner, says that the plaintiff is not seeking to introduce any new case; paragraph 3 of the plaint already contains the necessary averment that on 13-8-85, Rs. 5,000/- was borrowed by the defendant and the suit promissory note was executed. The proposed amendment is only intended to clarify the position.

3. I am unable to agree with the submission of the learned counsel for the petitioner. In his chief-examination, the petitioner-plaintiff as P.W.1 did not say anything about the defendant borrowing cash of Rs. 5,000/- in the morning of 13-8-85 and executing the promissory note in the evening. From a reading of paragraph 3 of the plaint, it is not possible to spell out that what is now endeavoured to be brought on record is by way of clarification. Paragraph 3 of the plaint has already been extracted, supra. If what is sought to be brought on record by way of amendment of the plaint was true, certainly the plaintiff would have deposed to that effect in his evidence as P.W.1 when he did not mention anything in that regard, permitting him to do so now would amount to allowing him to introduce a case other than what he has specifically pleaded. The learned District Munsif, therefore, was right in dismissing the application for amendment of the plaint.

4. The Civil Revision Petition, therefore, fails and accordingly it is dismissed. No costs.