

GAHC010261572022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/312/2022

THE NATIONAL COUNCIL OF YMCAS OF INDIA (NCYI)
REPRESENTED BY ITS NATIONAL GENERAL SECRETARY (NGS) MR.
BERTRAM DEVADAS,
SON OF LATE V.H. DEVADAS,
AGED ABOUT 62 YEARS, HAVING REGISTERED HEAD OFFICE AT K.T.
PAUL MEMORIAL BLOCK, 4TH FLOOR, JAI SINGH ROAD, NEW DELHI-
110001.

VERSUS

BIROL BASUMATARY AND ANR.
S/O- SHRI SAKARIA BASUMATARY,
R/O RAMKHE NAGAR, KALAPANI,
P.O.- MALIGAON, P.S.- JALUKBARI,
GUWAHATI- 781035, DIST.- KAMRUP(M), ASSAM.

2:RAJU SWARGIARY
S/O- LATE. GOPAL SWARGIARY

R/O- A.K. DEV ROAD
KATAHBARI

P.O. AND P.S.- GARCHUK

GUWAHATI- 781035
ASSAM

:: PRESENT ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioner	:	Mr. B.D. Deka, Advocate.
For the Respondents	:	Mr. R. Sarma & Mr. B. Borah, Advocates.
Date of Hearing	:	31.07.2023.
Date of Judgment	:	05.08.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. B.D. Deka, learned counsel appearing for the petitioner.
Also heard Mr. B. Borah, learned counsel representing the respondents.

2. This is an application under Section 227 of the Constitution of India challenging the order dated 03.11.2022 passed by the learned Civil Judge No.2, Kamrup(M), Guwahati in Misc.(J) Case No.421/2022 arising out of Title Suit No.53/2022.

3. The petitioner filed an application under Order VI Rule 17 of the Code of Civil Procedure praying for amendment of the pleadings. By way of amendment, the petitioner wanted to incorporate about 9 paragraphs in the plaint. The court partially allowed the prayer for amendment and rejected some of them.

4. I have considered the submissions made by the learned counsels of both sides.

5. The law regarding amendment of pleadings has been recently

settled by the Supreme Court in *Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. and Anr.*, reported in (2022) SCC Online SC 1128. Relevant portion of the judgment are quoted as under:

“(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is *malafide*, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main

issues in controversy between the parties, the amendment should be allowed. (See *Vijay Gupta v. Gagninder Kr. Gandhi*, 2022 SCC OnLine Del 1897)".

6. Whenever a petition under Order VI Rule 17 of the Code of Civil Procedure is filed, the court is not required to embark upon a mini trial of the case. The only aspect that is to be considered is whether the proposed amendments would change the nature and character of the suit. In the case in hand, I find that the proposed amendments would not change nature and character of the entire suit. The learned trial court erroneously embarked upon a mini trial of the case by deciding which amendment would be necessary and which amendment would not be necessary.
7. The impugned order is bad in law and stands set aside accordingly.
8. The trial court shall allow all the amendments as proposed by the petitioner.
9. With the aforesaid direction, the Civil Revision Petition stands disposed of.

JUDGE

Comparing Assistant