

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.12/2024

Sri Uddhab Datta

..... Petitioner(s).

V E R S U S

Smt. Puspa Rani Goswami (Baishnab) & others

.....Respondent(s).

For Petitioner(s)	: Mr. Ratan Datta, Advocate, Mr. R.G. Chakraborty, Advocate.
For Respondent(s)	: None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

16/02/2024

The plaintiff/appellant being aggrieved by the judgment dated 20.01.2020 passed in T.S. No.03 of 2016 by the Court of learned Civil Judge (Sr. Division), South Tripura, Belonia preferred T.A. No.01 of 2020. During trial, he had filed amendment application under Order VI Rule 17 of CPC to correct the name of the principal defendant No.1 Puspa Rani Goswami by adding an alias name Puspabala Goswami.

2. Since the order rejecting amendment application was passed on the same date of the judgment rendered in T.S. No.03 of 2016, appellant/petitioner herein could not get a chance to file a revision against that. However, he once again sought amendment in the name of the principal defendant No.1 in similar manner in the T.A. No.01 of 2020 by filing an application under Order VI Rule 7 read with Section 107(2) and Section 151 of CPC in Civil Misc. No.02 of 2020. That prayer has been declined by the impugned order dated 20.11.2023.

3. The learned appellate Court has held that similar amendment petition before the learned trial Court got rejected on 20.01.2020 which was not challenged by the appellant/petitioner before any higher forum. Further, the appellant/petitioner had filed his evidence on affidavit before the learned trial Court on 22.08.2017 and on 30.05.2018 he faced cross-examination. The documents submitted by him were also admitted as evidence and marked Exhibits-3 & 6 series which relate to defendant No.1 and contains her name as Puspabala Goswami. There was no assertion from the side of the appellant/petitioner that the matter sought to be incorporated by way of an amendment was not within his knowledge before the trial had commenced. Therefore, he had failed to make out a case for amendment of the plaint at the appellate stage by incorporating the alias name of the principal defendant No.1.

4. Mr. Ratan Datta, learned counsel for the appellant/petitioner, submits that the learned appellate Court was not right in observing that the plaintiff/appellant did not challenge the rejection order dated 20.01.2020 before any higher forum because the suit had itself been decreed on that date. It is submitted that the present appeal is at the stage of hearing. The learned appellate Court has carried an erroneous impression that the rejection order dated 20.01.2020 was not challenged by the petitioner/appellant before any higher forum whereas there was no occasion to challenge that order since the judgment had itself been delivered on the same date. He submitted that the

addition of alias name is a formal amendment which is not going to affect the subject matter of the suit or the cause of action or the reliefs prayed for. It would only help him having proper identification of one of the parties to the suit so that the judgment may not suffer on account of any confusion in the name of one of the defendants. He also submits that there are documents placed on record during trial which unmistakably point out the alias name of the defendant No.1 which ought to be added in the array of the parties to ensure that the status and identity of parties are certain and not imperfect. Therefore, he submits that since the appeal is still at the stage of hearing, an opportunity may be granted to the appellant to once again make a prayer before the appellate Court for allowing such amendment.

5. Upon hearing learned counsel for the appellant/petitioner and after perusal of the impugned order specifically para-10, it appears that one of the reasons which prevailed upon the learned appellate Court for rejecting the prayer was that earlier rejection order dated 20.01.2020 had not been challenged by him before any higher forum. However, since the judgment in itself was pronounced on the same date, there was no occasion for the plaintiff/appellant to assail the said order in an independent proceeding or revision before the higher forum. The only course left for the plaintiff was to seek amendment before the appellate Court which he did.

6. The appeal is still at the stage of hearing. Therefore, the appellant is allowed liberty to make a fresh application before the Court concerned which be considered in accordance with law after due opportunities to the parties without being inhibited by the order dated 20.11.2023 passed in Civil Misc.

No.02 of 2020. However, this Court has not made any comments either way on the amendment proposed to be made in the name of the respondent/defendant No.1 by the plaintiff/appellant.

7. The instant revision petition is disposed of.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

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