

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.98/2024

Smt. Putul Rani Debbarma, aged about 62 years, wife of Late Tarun Debbarma, resident of Town Sankarpalli, Amarpur, P.S.-Birganj, District-Gomati, Tripura, PIN-799101.

..... Plaintiff-Petitioner(s).

V E R S U S

1. Sri Biplab Debnath, Son of Sri Jiban Debnath, resident of Tepania, Udaipur, P.O.-R.K. Pur, P.S.-R.K. Pur, District-Gomati, Tripura, PIN-799120.

2. Sri Bijoy Debnath, son of Sri Jiban Debnath, resident of Tepania, Udaipur, P.O.-R.K. Pur, P.S.-R.K. Pur, District-Gomati, Tripura, PIN-799120.

3. Sri Prabir Kumar Nandi, son of Sri Dharendra Chandra Nandi, resident of Barabhaiya, Bagma, P.O.-Bagma, P.S.-R.K. Pur, District-Gomati, Tripura, PIN-799179.

4. Sri Bipad Debnath, son of Sri Kanailal Debnath, resident of Kupilong, Udaipur, P.O.-Kupilong, P.S.-Killa, District-Gomati, Tripura, PIN-799114.

.....Defendant-Respondent(s).

For Petitioner(s) : Mr. Abhijit Sengupta, Advocate.

For Respondent(s) : Mr. Tapash Datta Majumder, Sr. Advocate,
Mr. Dalit Kalai, Advocate,
Mr. Tapash Halam, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

05/02/2025

Heard Mr. Abhijit Sengupta, learned counsel appearing for the plaintiff-petitioner and Mr. Tapash Datta Majumder, learned senior counsel assisted by Mr. Dalit Kalai, learned counsel appearing for the defendant-respondents.

2. Title Suit No.5/2022 has been instituted by the petitioner-plaintiff for declaration that she is the owner of brick-kiln, chimney and reactor running in the name and style of 'M/s Tripureswari Bricks Company' Amarpur being inherited from her deceased daughter, Rupali Debbarma. She also sought mandatory injunction against the defendant-respondents, their men, agents and

labourers not to use the said brick-kiln, chimney and reactor. She has also prayed for realization of an amount of Rs.1,26,000/- as remuneration payable to the plaintiff-petitioner by the defendant-respondents as per Clause 10 of the Partnership Agreement.

3. An application under Order VI Rule 17 of the Code of Civil Procedure (CPC, for short) was preferred (Annexure-3) seeking amendment in the plaint and in the prayer portion for a direction upon the defendant-respondents to pay Rs.94,48,949/- as compensation for illegal demolition of brick kiln, chimney and reactor of M/s Tripureshwari Bricks Company, Amarapur along with interest on the assertion that during pendency of the suit the defendants had illegally demolished and dismantled the same from the month of September, 2022 and had constructed new brick kiln, chimney on the same land which was completed in December, 2023. By the impugned order dated 30.08.2024, the learned trial Court has refused to allow the amendment application with an observation that the prayer of the petitioner involves incorporation of prayer for grant of damages as compensation replacing the prayer made under Sections 38 & 39 of the Specific Relief Act and, as such, it will change the nature and character of the suit from a declaratory suit to a Money Suit which cannot be permitted within the ambit of law.

4. Mr. A. Sengupta, learned counsel for the petitioner, has referred to provisions of Order II Rule 2 of CPC, Section 34 of the Specific Relief Act and also certain decisions of the Apex Court in the case of **Rajesh Kumar Aggarwal and others Versus K.K. Modi and others** reported in (2006) 4 SCC 385 and in the case of **Andhra Bank Versus ABN Amro Bank N.V. & Others** reported in 2007 AIR SCW 4466. He submits that such amendment does not

change the nature and character of the suit and would only enable the Court to decide the real controversy between the parties. Therefore, the impugned order requires interference.

5. Learned counsel for the petitioner submits that the proposed amendment is required for the reason that because of subsequent events the relief as claimed originally may not be available to be granted and further the proposed amendments refer to such subsequent events or changed circumstances that would not only shorten litigation and avoid multiplicity of litigation but also enable complete justice to be done between the parties. There has been no delay in seeking such amendment since the demolition of the brick kiln, chimney and reactor of M/S. Tripureswari Bricks Company took place in the month of September, 2022 after institution of the suit. It is, therefore, submitted that the impugned order may be set aside and the proposed amendment may be allowed.

6. Mr. Tapash Datta Majumder, learned senior counsel for the defendant-respondents, has opposed the prayer on the ground that the proposed amendment is going to fundamentally change the nature and character of the suit. He has drawn the attention of this Court to the averments made in the plaint and the reliefs prayed for. It is submitted that the plaintiff who is the mother of Rupali Debbarma herself asserted at paragraph-3 of the plaint that it is the daughter of the plaintiff and 8(eight) number of persons, who are the successors of the partners of her daughter, had erected the brick kiln, chimney and installed the reactor for manufacturing of bricks for commercial purpose. Plaintiff had only sought for a decree that she is the owner of the brick kiln, chimney and reactor running in the name of M/S. Tripureswari Bricks

Company being inherited from her deceased daughter Rupali Debbarma. She had made further prayer for mandatory injunction against the defendants that they should not use the brick kiln, chimney and reactor from the date of the order. She had only sought realization of the remuneration payable to the plaintiff as per Clause 10 of the Partnership Agreement.

7. Learned senior counsel for the defendant-respondents has drawn the attention of the Court to the application under Order VI Rule 17 of the CPC and submitted that by the proposed amendment, the plaintiff has now sought compensation to the tune of Rs.94,48,949/- for alleged illegal demolition of the brick kiln, chimney and reactor of the company alleging that the same has been demolished and in its place new brick kiln and chimney are being completed by the defendants in the month of December, 2023. The valuation of the suit has correspondingly been sought to be changed. Further, the plaintiff has proposed certain averments which introduce the cost allegedly incurred by her daughter to the tune of Rs.98,48,949/- in construction of the brick kiln, chimney and reactor. It is submitted that it not only changes the nature and character of the suit but brings in a new cause of action not originally agitated. The defendants would be gravely prejudiced and taken by surprise. If this amendment is allowed, it cannot be compensated by adequate money. Therefore, the proposed amendments may be refused. He has relied upon a decision of the Apex Court in the case of *Revajeetu Builders and Developers vrs. Narayanaswamy and sons and others* reported in (2009) 10 SCC 84 (paragraph-63) in support thereof.

8. On consideration of the rival submissions of the parties, the materials referred to hereinabove and placed from record and after going through the impugned order, this Court is of the opinion that the amendments which have been proposed are in relation to events which have taken place after institution of the suit and relate to the same subject matter, i.e. the brick kiln, chimney and reactor. One course for the plaintiff could have been to prefer a fresh suit seeking damages or compensation for the alleged demolition of the brick kiln, chimney and reactor over which she claims title and mandatory injunction but if it is permissible for the plaintiff to file an independent suit why such relief could not be prayed for to be incorporated in the pending suit since the real controversy test is the basic of cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. The decision rendered by the Apex Court in the case of *Om Prakash Gupta vrs. Ranbir B. Goyal* reported in (2002) 2 SCC 256 relied upon by the petitioner lends support to this view. Paragraphs-11 and 12 thereof are usefully extracted hereunder:

"11. The ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied: (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In *Pasupuleti Venkateswarlu v. Motor & General Traders* [(1975) 1 SCC 770 : AIR 1975 SC 1409] this Court held that a fact arising after the lis, coming to the notice of the court and having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the court cannot be blinked at. The court may in such cases bend the rules of procedure if no specific provision of law or rule of fair play is violated for it would promote substantial justice provided that there is absence of other disentitling factors or just circumstances. The Court speaking through Krishna Iyer, J. affirmed the proposition that the court can, so long as the litigation pends, take note of updated facts to promote substantial justice. However, the Court cautioned:

(i) the event should be one as would stultify or render inept the decretal remedy, (ii) rules of procedure may be bent if no specific provision or fair play is violated and there is no other special circumstance repelling resort to that course in law or justice, (iii) such cognizance of subsequent events and developments should be cautious, and (iv) the rules of fairness to both sides should be scrupulously obeyed.

12. Such subsequent event may be one purely of law or founded on facts. In the former case, the court may take judicial notice of the event and before acting thereon put the parties on notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the course of litigation or the relief so as to bring it in conformity with the law. In the latter case, the party relying on the subsequent event, which consists of facts not beyond pale of controversy either as to their existence or in their impact, is expected to have resort to amendment of pleadings under Order 6 Rule 17 CPC. Such subsequent event, the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so for the purpose of determining real questions in controversy between the parties. In *Trojan & Co. v. RM. N.N. Nagappa Chettiar* [(1953) 1 SCC 456 : AIR 1953 SC 235] this Court has held that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found; without the amendment of the pleadings the Court would not be entitled to modify or alter the relief. In *Sri Mahant Govind Rao v. Sita Ram Kesho* [(1898) 25 IA 195 (PC)] Their Lordships observed that, as a rule, relief not founded on the pleadings should not be granted."

9. As held above, the Court has the power to take note of subsequent events and mould the relief subject to the following conditions being satisfied:

(i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties, and (iii) that such subsequent event is brought to the notice of the Court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.

10. Similar view has been rendered in a later judgment of the Apex Court in the case of *State of Madhya Pradesh vrs. Union of India and another* reported in (2011) 12 SCC 268 wherein the judgment relied upon by the learned senior counsel for the defendant-respondents in the case of *Revajeetu Builders and Developers* (supra) has also been referred to at

paragraphs-7 to 12 of the report. Following the observation made in *Revajeetu Builders and Developers* (supra) at paragraph-63 of the report it is evident that the proposed amendments in the present case appear to be imperative for proper and effective adjudication of the case and in fact, it would avoid multiplicity of litigation. The application for amendment cannot be said to be *mala fide* since it has been made in relation of an alleged event which has occurred after institution of the suit and promptly so.

11. It has also been brought to the notice of this Court by learned counsel for the petitioner that the prayer for injunction was refused by the learned trial Court. During pendency of the appeal against it, such alleged act of demolition had taken place which the plaintiff sought to incorporate by way of the proposed amendment. Moreover, it is also well-settled that while dealing with the prayer for such amendment, the learned Court ought not to observe on the merits of the case. If the amendments are allowed, defendants get a chance to file additional written statement to controvert and contest such averments and prayer. However, if the proposed amendment is not allowed to incorporate the subsequent events, the original relief prayed for in the suit may become inappropriate or cannot be granted.

12. Section 40 of the Specific Relief Act, 1963 reads as under:

“40. Damages in lieu of, or in addition to, injunction.”-(1) The plaintiff in a suit for perpetual injunction under Section 38, or mandatory injunction under Section 39, may claim damages either in addition to, or in substitution for, such injunction and the court may, if it thinks fit, award such damages.
(2) No relief for damages shall be granted under this section unless the plaintiff has claimed such relief in his plaint:
 Provided that where no such damages have been claimed in the plaint, the court shall, at any stage of the proceeding, allow the plaintiff to amend the plaint on such terms as may be just for including such claim.
(3) The dismissal of a suit to prevent the breach of an obligation existing in favour of the plaintiff shall bar his right to sue for damages for such breach.”

The proposed amendments are, therefore, also in consonance with the provisions of the Specific Relief Act and can be allowed to be incorporated at any such stage of the proceedings on such terms as the Court may deem just.

13. Taking a holistic view of the aforesaid facts and circumstances and the proposition of law as laid down by the Apex Court to the issue at hand, this Court is of the opinion that the proposed amendment should be allowed to enable the learned trial Court to render complete justice between the parties and also to avoid multiplicity of litigation since it relates to subsequent events which have occurred in respect of the subject matter of the suit during its pendency.

14. As such, the revision petition is allowed. The impugned order dated 30.08.2024 passed by the learned Civil Judge (Sr. Division), Court No.2, Udaipur, Gomati Judicial District in Civil Misc. case No.15 of 2024 arising out of T.S. No.05 of 2022 is set aside. The proposed amendments under Order VI Rule 17 of the CPC are allowed with a cost of Rs.5,000/- (rupees five thousand) in favour of the defendants to be paid on the next date before the learned trial Court. The defendants be allowed opportunity to file additional written statement.

15. The present revision petition is disposed of with the aforesaid observations.

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

(APARESH KUMAR SINGH), CJ

Pulak

PULAK BANIK Digitally signed by PULAK BANIK
Date: 2025.02.13 17:24:00 +05'30'