

09,DL,Ct.23.
27.11.2020.
AJ.

C.O. 1261 of 2020
(Through Video Conference)

Sri Sanjay Gadia & Ors.
-Vs-
Mrityunjay Khara & Ors.

Mr. Rabindra Narayan Dutta,
Mr. Sibasis Ghosh,
Mr. Nishant Kumar Saraf,
Mr. Hare Krishna Haldar,
Ms. Rakhi Dey.
... for the petitioners.

Affidavit-of-service filed in Court today be kept with the record. None appears on behalf of the opposite parties in spite of service.

The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiffs in a suit for declaration and permanent injunction and is directed against Order No. 105 dated February 19, 2020 passed by the 1st Court of the learned Civil Judge (Senior Division), Barasat, district 24-Parganas (North) in Title Suit No. 613 of 2013.

The learned Trial Judge by the order impugned has allowed an application filed by the defendants/opposite parties seeking amendment of the written statement.

The plaintiffs objected to such amendment on the ground that the defendants are not entitled to seek the said amendment as the trial of the suit has already commenced.

On perusal of the order impugned it appears that the learned Trial Judge has allowed the application for amendment on the ground that if the said amendment is allowed no prejudice would be caused to the plaintiffs.

The trial of the suit has commenced. No explanation has been offered by the defendants satisfying the Court that the amendment sought for could not be made earlier inspite of due diligence.

Mandate of the proviso appended to Order VI Rule 17 of the Code is not dependent upon the issue of the prejudice of the parties to the suit.

The requirement of offering explanation to the satisfaction of the Court to conclude that the amendment could not be made inspite of due diligence prior to commencement of trial is mandatory.

The learned Trial Judge, therefore, has exercised jurisdiction not vested in him in allowing the said application for amendment of written statement and for the said reason, the order impugned is not sustainable and is accordingly, set aside.

C.O. 1261 of 2020 is allowed.

There shall be no order for costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)