

08.12.2020
srm

C.O. No. 1467 of 2020

City Enclave Private Limited

Vs.

M/s. Anandlok Welfare Association & Ors.

Mr. Abhrajit Mitra,
Mr. Satadeep Bhattacharya,
Mr. Awani Kumar Roy

...for the Petitioner.

Mr. Aniruddha Chatterjee,
Mr. Sharanya Chatterjee

...for the Opposite Party.

This is an application filed by an added defendant in Title Suit No.15 of 2003 challenging an order dated September 8, 2020 passed by the learned Civil Judge (Senior Division), 2nd Court at Alipore. By the order impugned, the learned Civil Judge (Senior Division), 2nd Court at Alipore allowed the petitioner, City Enclave Private Limited, to be added as the plaintiff No.2 in the cause title of the counterclaim filed by the M/s. Anandlok Welfare Association in the said title suit. M/s. Anandlok Welfare Association, the defendant No.1 in the suit, filed an application under Order I Rule 10(2) of the Code of Civil Procedure on September 8, 2020 praying for addition of the petitioner as the plaintiff No.2 in the counterclaim.

Admittedly, the suit was dismissed for non-prosecution on September 13, 2007 in the presence of the petitioner's

predecessor-in-interest and the opposite party No.1, M/s. Anandlok Welfare Association. It has been recorded by an order dated November 27, 2007 by the learned Civil Judge (Junior Division), 2nd Court at Alipore that in the application filed by the plaintiff, that is, the predecessor-in-interest of the petitioner, it had been stated that the dispute in the suit had been amicably settled between the parties out of Court. Thus, the suit was dismissed for non-prosecution. None of the parties raised any objection. It appears from the order that a copy of the petition praying for dismissal of the suit along with firisti was filed and served upon M/s. Anandlok Welfare Association. Thereafter, the suit did not proceed and no further action was taken with regard to the Title Suit No.15 of 2003 although, M/s. Anandlok Welfare Association was aware that a counterclaim had been filed. According to the petitioner, as the entire dispute between the parties had been settled amicably as such, although, the counterclaim was not formally disposed of, the entire dispute having been settled, as recorded by the learned Court below, nothing further remained for adjudication and that was why the suit was dismissed for non-prosecution. The petitioner purchased the property around 2008 and records reveal that M/s. Anandlok Welfare Association was always aware of the subsequent purchase by

the petitioner. Yet they did not take any steps with regard to the counterclaim. It also appears that a suit was filed by M/s. Anandlok Welfare Association being Title Suit No.2313 of 2008 against the predecessor-in-interest of the petitioner. M/s. Anandlok Welfare Association also filed a suit being Title Suit No.221 of 2018 against the petitioner. An order of this Court is on record from which it appears that M/s. Anandlok Welfare Association had filed the subsequent suit suppressing the existence of a previous suit and this Court had vacated the order of injunction passed in the subsequent suit.

Although these are not the matters to be considered in deciding the issue before this Court, yet the various stages of litigation and orders passed therein as also the fact that the parties were before a Court which recorded that the entire dispute between the parties had been settled, in my opinion, justice would be subserved if the learned Court below, that is, the learned Civil Judge (Senior Division), 2nd Court at Alipore had given a direction for service of the application under Order I Rule 10(2) of the Code of Civil Procedure upon the petitioner before the said application was heard and allowed *ex parte*. The petitioner ought to have been given a opportunity to contest the application and also make their submissions and filed written objections before the learned Court below.

Moreover, the learned Court below proceeded as if the suit was dismissed for default but the counterclaim remained. The learned Court below did not apply its mind to the fact that the dispute was settled between the parties and the plaintiff had prayed for dismissal of the suit for non-prosecution. The petition filed therein with the firstis praying for dismissal of the suit recording the out of Court settlement, ought to have been looked into by this court. This Court does not need to make any observation as to whether the counterclaim survives or not. Under the circumstances, this Court is concerned only with the issue as to whether in the facts narrated hereinabove and in a situation where several orders have been passed and several suits have been filed and when the parties had settled the dispute out of Court, the application under Order I Rule 10(2) of the Code of Civil Procedure should have been served upon the petitioner before the same was disposed of by the learned Court below *ex parte* without recording any reasons or facts at all.

This Court is conscious of the proposition of law that the Court may add any person as a party to a suit without there being any formal application. Yet in this case, in view of the complicated facts, pendency of innumerable suits between the parties and order recording settlement of the dispute,

reopening the counter claim in the Title Suit No.15 of 2003 after 13 years at the instance of the defendant for adding the petitioner as a plaintiff, without giving the petitioner any notice of such application, was not proper.

Under such circumstances, the order dated September 8, 2020 is set aside and quashed. Courts should endeavour to do substantial justice. In this case, I am of the view that the petitioner, City Enclave Private Limited, should be allowed to file an objection to the application under order I Rule 10 (2) of the Code of Civil Procedure within a period of three weeks from date. The said application shall be heard afresh and disposed of within a month thereafter.

It is made clear that this Court has not gone into the merits of the claims of the parties but has restricted the observation only on the point as to whether the petitioner was entitled to a notice before the application for addition of parties was disposed of.

This revisional application is, thus, disposed of.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)