

S/L 34
28.01.2021
Court. No. 19
GB

C.O. 101 of 2020

Kheshjan Bibi
Vs.
Ayep Ali Mollah & Ors.

(Through Video Conference)

Mr. Falguni Bandyopadhyay.
...for the Petitioner.

Mr. Ziaul Haque,
Mr. Suman Kr. Bhattacharya.
...for Opposite Party Nos.1 to 5.

This revisional application has been filed by the defendant no.9 in Title Suit No.318 of 2014 being aggrieved by an order dated November 26, 2019, by which an application for amendment has been allowed by the learned Civil Judge (Junior Division), 6th Court at Alipore.

It appears that the order impugned is without any reasons. It is the contention of the petitioner that the statements to be incorporated by way of an amendment as Paragraph-13A and Paragraph-13B, were within the knowledge of the opposite party and the opposite party did not show due diligence in filing the amendment application.

It is further submitted that such belated amendment if allowed, would cause injustice to the defendant. It is further submitted that the learned court below failed to assign reasons as to why the said amendment should be allowed and why in the opinion of the learned court below

the same was just a formal amendment and would not change the nature and character of the suit.

I have gone through the amendment which was sought to be incorporated. In my opinion, the said amendment is relevant for the dispute. The amendment does not change the nature and character of the suit property. It is also a cardinal principle of law that merits of the amendment need not to be considered at the time of consideration of the application for amendment. These issues shall be decided at the trial. It is also settled that this Court sitting in supervisory jurisdiction under Article 227 of the Constitution of India could supply the reasons if the subordinate court failed to do so when the conclusion arrived at was correct.

However, I accept Mr. Bandyopadhyay's contention that the amendment is belated. The order impugned is modified to the extent that the plaintiffs/opposite parties will pay a total cost of Rs.5,000/- to the opposite parties (excluding the amount already paid pursuant to the direction of the learned court below). Such cost to be paid by the learned advocate appearing on behalf of the plaintiffs in the learned court below to the learned advocate on record for the defendant no.9 within 10 days from date. The receipt showing payment of Rs.3,000/- (if Rs.2,000/- has already been paid) be filed in the learned court below. Upon acceptance of such receipt by the learned court below, the suit will proceed in accordance with law on the basis of the amended plaint.

In case of failure of the opposite parties to comply with the order, the amended plaint shall not be taken into consideration by the learned court below.

The petitioner shall file additional written statement within four weeks from the receipt of the copy of the amended plaint.

The revisional application is 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.)