

04.02.2021  
Court No. 19  
Item No.11  
CP

C.O. 219 of 2021

Hemraj Agarwal  
vs.  
Pinki Agarwal

Mr. Animesh Paul

....for the petitioner.

This revisional application has been filed by the plaintiff in Title Suit No. 1474 of 2015. The plaintiff is aggrieved by an order dated February 14, 2020, passed by the learned Civil Judge (Junior Division), 4<sup>th</sup> Court at Howrah.

It is the contention of the plaintiff that the application for amendment was allowed by the order impugned without following the proviso to Order 6 Rule 17 of the CPC. The amendment of the written statement was allowed at a belated stage and the grounds on which the amendment of the written statement should be allowed were not satisfied. The amendment amounted to withdrawal of an admission made in the written statement. The amendment amounted to changing the nature and character of the suit property by introducing a new case. The learned advocate for the petitioner relied on the decision of the Hon'ble Apex Court in the matter of Vidyabai & ors. vs. Padmalatha & anr., reported in

(2009) 2 SCC 409. In the said decision, the Hon'ble Apex Court laid down the principle that the court must be satisfied while allowing an amendment that in spite of due diligence, the party proposing to incorporate an amendment to a pleading, could not have brought those facts before the court.

I have gone through the nature of amendment. I find that those pleadings are clarificatory and explanatory in nature in addition to the contentions of the defendant in the written statement. The basis of such pleadings are already existing in the written statement and no new case is being made out. The nature of the defence does not change. The defendant has just added facts which occurred leading to the marriage and subsequent thereto. I do not find that there is any withdrawal of any admission. The learned advocate for the petitioner submitted is that the defendant mentioned in the written statement that the marriage took place in Kalighat Temple in the presence of family members and thereafter, only by amendment sought to incorporate that the said marriage took place in the Kalighat temple in front of friends. The facts pleaded are necessary for proper adjudication of the dispute between the parties. This cannot be termed as withdrawal of an admission. The merits of an amendment is to be decided at the trial. The apprehension of the petitioner that subsequent

to the amendment new facts have been brought in is not appreciated.

This court does not find any reason to interfere with the order impugned.

The decision in Vidyabai (supra) does not apply in this case, inasmuch as, the proviso will not be attracted in this situation as the learned court was satisfied that the defendant in due diligence had given all the information to her learned advocate and it was the laches on the part of the learned advocate not to have incorporated the facts in the written statement.

Under such circumstances, once discretion has been exercised by the learned court below, this court does not find it necessary to interfere with the order impugned. The revisional application is dismissed.

The petitioner will be at liberty to file the additional written statement and will also have the opportunity to prove those facts by leading further evidence.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

**(Shampa Sarkar, J.)**