

06,DL,Ct.18
04.02.2021
AJ.

C.O. 248 of 2021

Tarak Shaw
-Vs-
Monoj Kumar Sil & Ors.

Mr. Saumyajit Ghosal,
Mr. Pinaki Brata Ghosh,
Ms. Susmita Mazumdar,
Mr. Ashutosh Mukherjee.
... for the petitioner.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendant in a suit for ejectment and is directed against Order No. 25 dated January 05, 2021 passed by the learned 2nd Judge, Presidency Small Causes Court at Calcutta in the said ejectment suit being Ejectment Suit No. 223 of 2018.

The learned Trial Judge by the impugned order has allowed an application under Order VI Rule 17 of the Code of Civil Procedure filed by the plaintiffs/opposite parties seeking amendment of plaint.

Mr. Saumyajit Ghosal, learned advocate appearing on behalf of the petitioner submits that the plaintiffs in the plaint claimed that the suit premises is a “G+3” storied building but from the report of the Advocate Commissioner appointed in the said suit, it appeared that the suit property is a “G+4” storied building. The plaintiffs, to cover suppression of fact made in the plaint, have filed the application for

amendment and the learned Trial Judge without considering the same has allowed the said application.

On perusal of the said application for amendment, it appears that the plaintiffs are claiming that during the pendency of the suit they have constructed an additional floor over the suit premises to accommodate the married daughter of the plaintiff no.1.

Whether there was any suppression of fact by the plaintiffs in the plaint or not, will be decided in the course of trial of the suit on evidence, at the stage of allowing an application under Order VI Rule 17 of the Code such investigation is totally irrelevant.

The trial of the suit has not yet commenced. The learned Trial Judge, therefore, has not committed any error in allowing the said application for amendment.

The order impugned, for the aforesaid reason, does not call for any interference.

However, time for filing of additional written statement by the petitioner is extended for two weeks from the date of receipt of the copy of the amended plaint.

C.O. 248 of 2021 is disposed of with the above terms. 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.)