

03.03.2021
Sl. No. 5
srm

C.O. No. 374 of 2021

**Gopal Banerjee
Vs.
Sri Arihant Manot**

Mr. Siva Prasad Ghose,
Ms. Debjani Ghosh Roy (Deb)
...for the Petitioner.

Mrs. Manju Agarwal,
Mr. Bajrang Manot
...for the Opposite Party.

This revisional application has been filed against an order dated February 9, 2021 passed by the learned Civil Judge (Senior Division), Sealdah, North 24-Parganas in Title Suit No.115 of 2020. The petitioner is aggrieved by the order impugned, inasmuch as, according to the petitioner, an amendment application was allowed without affording an opportunity to the petitioner to file the written objection to the said application.

It is submitted, on the said date, the learned Court below had fixed the hearing of the application under Order XXXIX Rule 4 of the Code of Civil Procedure. The opposite party filed two applications seeking amendment of the plaint and the application for temporary injunction. The learned Court found the amendment to be formal in nature and

allowed the same. It is contended that the amendment application ought to have been taken up for hearing upon affording an opportunity to the petitioner to file a written objection to the same.

Mrs. Agarwala, learned Advocate appearing on behalf of the opposite party, submits that the amendment was purely for correction of typographical errors and the amendment would not change the nature and character of the suit. It is also submitted that the defendant's Advocate was present before the Court but did not pray for time to file the written objection.

Having heard the contentions of the respective parties, in my opinion, even if the amendment is formal in nature, the learned Court below ought to have allowed the defendant an opportunity to file a written objection. On this ground alone the order impugned is set aside and quashed.

The petitioner will file the objection to the amendment application within a week from date and the learned Court below will decide the application afresh on the next date fixed.

It is made clear that setting aside of the order impugned is not an adjudication on the merits of the amendment application and also not an adjudication on any other reliefs to which the plaintiff is entitled to and/or has already granted by the learned Court below.

The learned Court below shall proceed in accordance with law and on the merits of the amendment application upon hearing both the parties.

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.)