

9th August,
2021
(AK)
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C.O. 897 of 2019

**Sri Aritra Maity and others
Vs.
Sri Swadhin Das and others**

(Via video conference)

Mr. Gopal Ghosh
Mr. Om Narayan Rai
... For the Petitioners.

Mr. Amit Baran Dash
...For the Opposite party no.4.

Affidavit-of-service filed in court today be kept on record.

Upon hearing learned counsel for both the parties, it appears that the grievance of the plaintiffs/petitioners is that the trial court acted without jurisdiction in permitting the defendants/opposite parties to withdraw an admission made in the original written statement and change the entire nature and character of the defence case by way of the amendment of written statement which was allowed by the impugned order.

Learned counsel submits that the amendment application was taken out after the plaintiffs' evidence was closed and the evidence of the defendants were about to begin.

By placing relevant portions of the plaint, it is argued that the plaint case, from the inception, was

categorically that the company, in the name of which the impugned deed was purportedly executed, was fictitious.

Instead of dealing with such averment directly, the original written statement enumerated that the defendants purchased the property, which position was sought to be resiled from by way of the amendment application by trying to introduce that such purchase was on behalf of the company-in-question.

However, since it will always be open to the plaintiffs to recall their witnesses, if necessary, for the purpose of dealing with the amended pleadings and/or evidence led by the defendant thereon, and it is well-settled that courts are liberal in allowing the amendment of written statements (unlike plaints), although such amendment may introduce an entirely new or alternative defence, the trial court committed no jurisdictional error in allowing such amendment.

In view of the above considerations, the revisional application fails.

Accordingly, C.O. 897 of 2019 is dismissed on contest, affirming the order impugned therein.

However, it is made clear that the merits of the contentions of either of the parties have not been gone into at all by the trial court, while passing the impugned order, or this court, since the limited moot question involved in the present revision was whether the trial court was justified in allowing the amendment.

As such, it will be open to the court below to decide all issues raised in the suit on their own merits without being influenced in any manner by any of the observations made herein or in the impugned order.

There will be no order as to costs.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)