

AD. 14.
July 19, 2021.
MNS.

C. O. No. 907 of 2021
(**Via video conference**)

Shyamal Kanti Dutta
Vs.
Smt. Shefali Dutta and another

Ms. Deblina Lahiri

... for the petitioner.

Mr. Pinaki Ranjan Mitra

...for the opposite parties.

Affidavit-of-service filed in Court today be
taken on record.

Heard both parties.

Learned counsel appearing for the
petitioner contends that that compass of the
revisional application is short.

The first limb of her argument is that the
facts sought to be incorporated by way of an
amendment by the petitioner was intended to
introduce only relevant facts, being the pendency
of certain prior litigations and the rectification of a
date of a document mentioned erroneously in the
original plaint.

Learned counsel further submits, by
placing reliance on the Division Bench judgement
of **Sree Sree Iswar Radha Behari Jew**

represented by Basudeb Das Vs. Malati P. Soni, reported at AIR 2019 Calcutta 131, wherein a reference on the question, whether, in view of ***Vidyabai V. Padmalatha [(2009) 2 SCC 409]***, 'commencement of trial', as envisaged in the proviso to Order VI, Rule 17 of the Code of Civil Procedure, would mean the date of first hearing, that is the date of framing of issues, or the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. The answer to such question, given by the Division Bench, was that the expression "commencement of trial" in the proviso to Order VI, Rule 17 of the Code of Civil Procedure would imply the date when the court first applies its mind after the affidavit of evidence is filed and when the first witness proves his affidavit of evidence or such witness seeks to prove a document for it to be tendered in evidence or the cross-examination of such witness begins, whichever is earlier.

Learned counsel appearing for the defendants/opposite parties, on the other hand, contends that, in any event, the facts sought to be introduced by way of amendment were known to the plaintiff/petitioner before the filing of the suit.

Hence, the belated filing of the amendment application could not have been allowed as a matter of course and rightly rejected by the trial court.

Upon going through the cited judgment and the argument of counsel, a perusal of the trial court's order, which is impugned herein, makes it evident that the trial court relied merely on the proviso to Order VI Rule 17 of the Code of Civil Procedure, whereas only the issues had been framed in the suit and the final hearing had not yet started. In the process, the ratio laid down in the cited Division Bench judgment was entirely overlooked.

Moreover, the proposed amendments are innocuous in nature and cannot change the complexion or nature and character of the suit at all. Particularly, keeping in view the date of filing of the amendment petition at a nascent stage of the suit, the court ought to adopt a liberal approach, as per settled law, in allowing such amendments. Thus, on both scores, the impugned order ought to be set aside.

Accordingly, C. O. No. 907 of 2021 is allowed on contest, thereby setting aside the impugned order, bearing order no. 13 dated

March 17, 2021 passed by the Civil Judge(Senior Division), Third Court at Barasat, District – North 24 Parganas, in Title Suit No. 468 of 2019.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)