

**BIRESWAR DUTTA & ORS. VS. GIRIDHARI
SWARNAKAR & ORS.**

Mr. Partha Prarim Ray
Mr. Suman Agarwal
..for the petitioners

This revisional application arises out of an order dated February 5, 2021 passed by the learned Civil Judge, Junior Division, 2nd Court, Serampore, District Hooghly in Title Suit No. 377 of 2018.

By the order impugned, the learned Court below has allowed the application for amendment under Order 6 Rule 17 of the Code of Civil Procedure. According to the learned Court below, the amendments were for correction of typographical errors and incorporation of subsequent developments in the suit, namely, illegal construction raised by the defendants over the suit property.

Mr. Ray, learned Advocate appearing for the petitioners submits that the schedule of amendment read as a whole would reflect that the mistakes sought to be corrected were not merely typographical errors but introduction of new facts to fill-up the lacuna in the pleadings.

Mr. Ray further submits that the amendment under Schedule B&C of the schedule of amendments are allegations of unauthorised construction in violation of the Municipal Building Rules and without the municipal authorities being impleaded as parties to the proceeding, such amendment cannot be allowed as the reliefs cannot be granted and the contentions of the plaintiffs cannot be adjudicated upon. According to Mr. Roy, the municipal authorities are necessary parties.

I have gone through the plaint and it appears that in paragraph 6 of the plaint it has been stated that the “plaintiffs” were trying to raise unauthorised construction on the suit property. Thereafter, the plaintiffs go on to describe how the defendants had raised unauthorised and/or forceful construction. Thus, the correction of expression “plaintiffs” by inserting “defendants” in the first line of paragraph 6 of the plaint is nothing but correction of a typographical error.

Paragraph 6 of the plaint read as a whole would clarify that use of word “plaintiffs” in place of defendants is actually a typographical error. The first paragraph of the schedule of amendment was rightly allowed by the learned Court below. With regard to second paragraph of the schedule of amendment, the plaintiffs wanted to insert the nature of demolition and illegal construction in detail by inserting paragraph 6A.

The basis of which has been laid in paragraph 6 of the plaint. Thus, I do not find any illegality in allowing the said amendment. With regard to the amendment sought to be inserted contained in paragraph 3 of the schedule, the plaintiffs wanted to describe the subsequent illegal construction which were carried out by the defendants during the pendency of the suit, in detail.

The suit is one for declaration of title and permanent injunction. The plaint case all through is with regard to the forceful and illegal construction by the defendants on the suit property. Thus, introduction of facts of subsequent and further illegal construction cannot be said to change the nature and character of the suit and also cannot be said to be introduction of a new case or filling up of any lacuna. They are more or less clarificatory and explanatory in nature. Such amendments are always allowed unless the amendment amounts to withdrawal of any admission which may cause irreparable loss and injury to the opponents. I do not find any irregularity in the order impugned as the amendments are explanatory, correction of typographical errors and introduction of facts which occurred subsequent to the filing of the suit.

I do not accept Mr. Roy's contention is that unless the Municipal authorities are impleaded in the suit, the said amendment should not be allowed as the

suit would not be maintainable on the reliefs claimed. The correctness of the amendment is not to be looked into by the Court at the time of dealing with an application under Order 6 Rule 17 of the Code of Civil Procedure. These are issues to be decided at the trial. Merits of the amendment is not be decided at the stage of disposing of an application under Order 6 Rule 13 of the Code of Civil Procedure. In the decision of **Revajeetu Builders & Developers v. Narayanswamy & Sons**, reported in **(2009) 10 SCC 84**, the Hon'ble Apex Court has discussed the principles governing amendment which are broadly summarised below:-

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline

amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive. In this case, the amendments are bonafide and necessary for proper adjudication of the dispute.

This revisional application is dismissed.

There will be however no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

(Shampa Sarkar,J.)