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02.08.2021
TN

CO No.1251 of 2019

Nirmala Das (Jana)
Vs.
Sri Ratan Samanta

Mr. Amitabha Ghosh,
Mr. Madan Mohan Roy

.... for the petitioner

Mr. Amit Baran Dash

.... for the opposite party

The grievance of the defendant/petitioner in a suit for eviction of licensee, where the defendant has taken a stand that she is a tenant, is that the trial court acted without jurisdiction in fixing an amendment application for hearing on the next date, although the same had been disposed of earlier.

That apart, the trial court imposed costs of Rs.400/- upon rejecting a reply of the petitioner to an interrogatory application of the plaintiff/opposite party, by coming to premature conclusions as to the necessity of adding those persons as parties to the suit.

Learned counsel for the plaintiff/opposite party, at the outset, contends that the application, which was fixed by the impugned order for hearing on a subsequent date, was not the application for amendment which had been disposed of previously, but a different amendment application.

That apart, learned counsel for the opposite party argues that the trial court was correct in arriving at the finding that mere witnesses to an alleged deed of tenancy cannot be necessary parties to the eviction suit. Hence, such objection of the defendant/petitioner being frivolous, the trial court was justified in imposing costs of Rs.400/-.

As far as the amendment application is concerned, it is obvious from the impugned order that the amendment application fixed for hearing on the next date was filed on the date of the impugned order itself, that is, February 6, 2019. As such, it can be expressly derived from such fixation of date that the trial court fixed a date for hearing of the amendment application filed on the date of the impugned order and not the previous one which had already been disposed of earlier.

As far as the imposition of costs is concerned, no revision lies merely against imposition of costs. However, if the veracity of the order is challenged

substantially on merits as well, the justification of the costs imposed can be examined by the revisional court.

Although the trial court might have been correct in principle in observing that the parties who were named in the reply to the interrogatory were not necessary parties to the suit, being merely witnesses to an alleged tenancy agreement, the stage was premature for the trial court to come to such finding on merits, since the necessity of joinder of the parties disclosed by the defendant/petitioner can only be considered at the stage of final hearing of the suit.

Moreover, although the opposite party places reliance on Order XI Rule 10 of the Code of Civil Procedure in order to justify the scope of passing an order such as the impugned one, such Rule has no application to the present case, since the affidavit-in-answer sufficiently disclosed the names of the parties, who were necessary parties to the suit in the perception of the defendant/petitioner. Rule 10 is only attracted when the answer given by the answering-party is insufficient. In the present case, even if the parties named in the reply were not necessary parties to the suit, the answer of the petitioner to the interrogatories could not be said to be “insufficient” for the purpose of Rule 10.

At best, the consequence of non-compliance with the direction for answering interrogatories could have led to the defence of the petitioner being struck out. However, since, in the present case, no such case of insufficiency has been made out, mere legality of the defence case that the disclosed persons are necessary parties cannot be an impediment to accepting the affidavit of the petitioner.

In fact, the consequence of the impugned order of rejection of the reply may ultimately lead to the defence of the defendant/petitioner being struck out under Rule 21 of Order XI, although no exception was made out under Order XI Rule 10. Moreover, the question as to the disclosed persons being unnecessary to the suit, even if correct in principle, could not have been decided at the premature stage of interrogatories and amendments.

Accordingly, CO No.1251 of 2019 is disposed of by setting aside the portion of the impugned order whereby costs were unnecessarily imposed on the petitioner.

That apart, it is made clear that the findings arrived at by the trial court regarding the parties disclosed in the reply of the petitioner to the interrogatories being unnecessary parties to the suit, will be deemed to be tentative, arrived at only for the

purpose of deciding the fate of the reply. The reply shall be treated to be accepted and it will be open to both the parties to argue the necessity of adding such parties to the suit at the time of hearing.

The trial court shall decide such question in accordance with law, if raised, on its own merits, without being influenced in any manner by the observations made in this order and/or the impugned order.

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.)