

S/L 28
21.09.2021
Court. No. 07
suwayan

CO 1303 of 2021
(Through Video Conference)

Md. Sadek Jamal
Vs.
Md. Imtiaz Zamal

Mr. Syed Nurul Arefin
Ms. Saswati Chatterjee
Mr. Rahul Singh

...for the Petitioner

Mr. Rajdeep Bhattacharya
Mr. Tirthankar Dhali

...for the Opposite Party

Attention of the Court is drawn to the order dated September 20, 2021 wherein the name of the learned advocate representing the opposite was inadvertently recorded as “Mr. Sandip Kumar Bhattacharyya” instead of “Mr. Rajdeep Bhattacharya”.

The plaintiff in a suit for declaration of title and for a further declaration that the Hebanama mentioned in Schedule C to the plaint is an outcome of fraud, threat, coercion, duress and undue influence and the same is not binding upon the plaintiff has filed the instant application challenging the order being No. 31 dated March 15, 2021 passed by the learned Civil Judge (Junior Division), 2nd Court, Burdwan in Title Suit No. 138 of 2017.

By the impugned order the application for amendment of the written statement was allowed by the learned Trial Judge.

Mr. Arefin the learned advocate appearing for the petitioner submits that the application for amendment of

written statement which was taken out after commencement of trial ought not to have been allowed by the learned Trial Judge as the opposite party failed to satisfy the proviso to Order VI Rule 17 of the Code of Civil Procedure. He further submits that the proposed amendments are not necessary for the purpose of deciding the real controversies between the parties.

Mr. Bhattacharya, learned advocate appears for the opposite party and submits that during the pendency of the suit the plaintiff filed an application before the Sub-Divisional Officer, Purba Burdwan under the Maintenance and Welfare of Parents and Senior Citizen Act claiming eviction of the opposite party herein and such application was ultimately dismissed by the said authority. Mr. Bhattacharya, submits that the said fact was sought to be incorporated in the written statement by way of amendment.

I have heard the learned advocate for the parties and considered the materials on record. The opposite party herein sought to incorporate certain subsequent event relating to filing of a proceeding under the said Act by the petitioner herein against the opposite party before the concerned authority as well as the fate of such proceeding in the written statement by way of amendment.

The plaintiff is the father of the defendant. It has been alleged in the plaint that the defendant did not care or bother for proper living and maintenance of the plaintiff and the wife. It was also alleged that the plaintiff is an aged person of 75 years and the defendant is inflicting physical and mental torture upon the plaintiff.

After taking into consideration the averments made in the plaint, this Court is of the view that the said facts are necessary for the purpose of deciding the real controversy involved in the instant suit. Since the fact of institution of the said proceeding as well as the decision thereof is a subsequent event, proviso to Order VI Rule 17 of the Code of Civil Procedure cannot be a bar in allowing the application for amendment of the written statement in the instant case.

Furthermore the learned Trial Judge directed cost to be paid to the plaintiff to compensate for the delay. The learned Trial Judge by a well-reasoned order allowed the said application for amendment of the written statement. The said order does not suffer from any infirmity, warranting interference under Article 227 of the Constitution of India.

Since the suit is pending from the year 2017 and the petitioner is a senior citizen, the learned Civil Judge (Junior Division), 2nd Court, Burdwan is requested to dispose of the Title Suit No. 138 of 2017 as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

Co 1303 of 2021 accordingly stands 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.

(Hiranmay Bhattacharyya, J.)