

23.11.2021
(S/L-13)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 1569 of 2021

Samsujjaman Munshi
-Vs-
Board of Auqaf, West Bengal & Ors.

Mr. Iftekar Munshi,
.... For the Petitioner.

Mr. Goutam Kr. Roy,
Mr. Sk. Mahbub Hossain,
... For the Opposite Parties.

The defendant no.1 in a suit for declaration that the suit property is a Auqaf Property is the petitioner of the present application under Article 227 of the Constitution of India which is directed against order No. 63 dated August 25, 2020 passed by the learned Auqaf Tribunal, West Bengal in the said suit being Suit no. 31 of 2015.

The Tribunal by the order impugned has dismissed an application filed by the petitioner seeking amendment of written statement.

Mr. Munshi, learned advocate appearing on behalf of the petitioner submits that by the proposed amendment, the petitioner sought to incorporate relevant subsequent events in the written statement necessary for the purpose of proper adjudication of the said suit, the Tribunal

should not have refused the prayer of the petitioner for such amendment.

He, relying on the decisions of the Hon'ble Supreme Court in the case of ***Pradeep Singhvi & Anr. vs. Heero Dhankani & Ors.*** reported in (2004) 13 SCC 432 and in the case of ***Baldev Singh & Ors. vs. Manohar Singh & Anr.*** reported in (2006) 6 SCC 498 submits that commencement of trial of the suit is not a complete bar in allowing an application for amendment of pleadings since consideration for allowing an application for amendment of plaint is completely different from the consideration in allowing an application for amendment of written statement.

Heard Mr. Munshi, perused the materials-on-record.

The petitioner by the proposed amendment is setting up a counter-claim. The mandate of Order VIII Rule 6A of the Code of Civil Procedure is that a defendant in a suit may set up by way of counter-claim against the claim of the plaintiff any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after filing of the suit but before the defendant has delivered his defence.

The petitioner has filed his written statement on April 08, 2019, whereas the petitioner claims that cause of action of the counter-claim arose on April 26, 2018. The petitioner, therefore, cannot maintain the said counter-claim on the said cause of action being accrued to him after delivery of his defence in the said suit.

The aforesaid decisions relied on by Mr. Munshi have got no manner of application in the facts and circumstance of the present case.

This Court, for the aforesaid reason, is not inclined to interfere with the order impugned.

C.O. 1569 of 2021 is dismissed without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)