

13.12.2021
Ct. 21
D/L 02
AB

C.O. No. 2000 of 2021
Tirupati Vinimoy Private Limited
-VS-
Karnani Properties Limited

Mr. Rajeev Kumar Jain,
Mr. Abhirup Chakraborty,
Mr. Ayush Jain,

....for petitioner

Mr. Aniruddha Chatterjee,
Mr. Tanmoy Mukherjee,
Mr. Neelesh Choudhury,
Ms. A. poddar,

....for the opposite party

Being aggrieved by the order of rejection of the amendment petition under Order 6 Rule 17 Civil Procedure Code along with another application under Section 151 Civil Procedure Code passed by the learned Judge, 5th Bench, City Civil Court at Calcutta in Title Suit No. 35486 of 2014 on 30.03.2021, the petitioner/defendant has filed this application under Article 227 of the Constitution.

The facts necessary for determination of the present revisional application in gist is that opposite

party being the plaintiff/owner of the disputed tenanted premises no. 35 Park Street, Kolkata has filed an eviction suit being no. 35486 of 2014 in respect of a shop room measuring 1815 square ft. carpet area situated on ground floor and under the occupation of the defendant/petitioner for recovery of possession along with mesne profits on 27.11.2014.

The defendant contested such suit by filing W.S. on 15.12.2015.

Then almost two years later it had come up with a petition for amendment of the written statement. Such petition came up for consideration before the learned Court below on 09.01.2018. After hearing both sides the learned Court below was pleased to reject the application with findings that the defendant by way of amendment wanted to delete the entire facts which it has contended in its W.S. and wanted to replace the same by new set of facts in its defense and if granted would cause prejudice to the plaintiff and which could not be compensated adequately in terms of money.

Being aggrieved by such rejection order, the defendant preferred a revision before this Court being no. C.O. 365 of 2018. Hon'ble Co-ordinate Bench after hearing both sides was pleased to reject the same on 22.06.2018, with the findings the defendant

by way of amendment wanted to delete the entire W.S. except the 1st page and wanted to substitute the original written statement with a new one with different cause of action and plea. Such amendment, if allowed would take away the valuable rights accrued in favour of the plaintiff.

Challenging such order of Hon'ble Co-ordinate Bench passed in C.O. 365 of 2018, the defendant moved the Hon'ble Supreme Court. Hon'ble Supreme Court too dismissed the Special Leave Appeal No. 20120/ 2018 on 20.08.2018.

The defendant once again to try its luck and has filed a fresh amendment petition on 22.11.2018 and prayed for amendment in the W.S., but later by filing another petition under Section 151 Civil Procedure Code has prayed for treating the amendment petition as one under Order 8 Rule 8 read with Section 151 Civil Procedure Code. Such petitions of the defendant were considered by the learned Court below on 30.03.2021 and pleased to reject the amendment petition or so called petition under Order 8 Rule 8 CPC on the ground of Res Judicata by passing impugned order.

Being aggrieved by such order the defendant has filed the present revisional application.

Learned Advocate for the defendant/petitioner submits that defendant is inducted as a lessee by the plaintiff/opposite party in respect of suit property on the strength of a lease deed executed on 17.03.2005. The registration of such lease deed got completed during the pendency of suit on 22.11.2018. Such facts is being developed during the pendency of the suit the defendant wants to bring such subsequent facts as its defense under Order 8 Rule 8 Civil Procedure Code, and wants incorporation in the Written Statement. If such prayer is not granted then the interest of the defendant will be prejudiced.

He further submits the principle for amendment of plaint and for amendment of W.S. is different. The plaintiff cannot be allowed to amend his pleading so as to alter materially or substitutive his cause of action or the nature of his claim. While adding a new ground of defense or substituting or altering a defense does not raise same problem as adding or substituting a new cause of action in the plaint. The Court has to be liberal in allowing the Written Statement. He also submits the facts which the defendant wants to take as its defense having been developed during the pendency of the suit is necessary to incorporate in the Written Statement, otherwise there will be failure of justice.

He in support of his submission referred to 1) *Baldev Singh & Ors. Vs. Manohar Singh and Anr. reported in (2006) 6 SCC 498,*

2) *M/s Ganesh Trading Co. Vs. Moji Ram, reported in (1978) SCC 91 and*

3) *Sajjan Kumar Vs. Ram Kishan, reported in (2005) 13 SCC 89.*

On the other hand learned Advocate for the opposite party has submitted, the facts which the defendant wants to incorporate in the Written Statement by way of amendment was already dealt in details while affirming the order of rejection passed by the Ld. court below by Hon'ble Co-ordinate Bench in C.O. 365 of 2018. The rejection order has attained its finality on dismissal of SLP filed by the defendant before Hon'ble Suprem Court, challenging the order passed in C.O. 365 of 2018. Therefore, the present amendment petition of the defendant is bared by Principle of Res Judicata. He in support of his submission referred to *Arjun Sing vs. Mohindra Kumar & ors., reported in (1964) 5 SCR 946.*

Now, let see whether the present amendment petition is indeed barred by principle of res judicata?

In paragraph 8 the original Written Statement filed by the defendant on 15.12.2017, it has candidly admitted that it was inducted in the suit premises as

a tenant or as a lessee on the basis of an unregistered agreement. The paragraph 8 of the written statement is reproduced and read as *“that the instant suit is based on an unregistered lease for 75 years and which is inadmissible in evidence except for collateral purpose and is hit by section 107 of Transfer of Property Act, 1882 and Section 17 of the Registration Act, and fails on that ground alone”*.

Now, by proposed amendment it wanted to incorporate the fact the agreement which was executed between it and the plaintiff way back in the year 2005 was not an unregistered document but a registered lease deed for 75 years. Further, the facts which the defendant wants to bring on record by way of amendment or as its defense case was extensively discussed by Hon’ble Co-ordinate Bench while disposing C.O. 365 of 2018.

Hon’ble Co-ordinate Bench in paragraph 3 of its order has been pleased to mention *“the defendant in its original written statement admitted its tenancy is governed by the agreement dated March 17, 2005 and there was no whisper that the said agreement was not a tenancy agreement but a registered lease agreement. The defendant wants to change its stand by filing amendment that it is not a tenant under the said agreement and plaintiff cannot proceed for its eviction*

on the basis of an unregistered agreement, when the agreement was a registered lease agreement duly registered in 2018. The defendant wanted to canvass the registration was pending since 2005 was completed only in 2018”.

From the above observations made by Hon’ble Co-ordinate Bench while disposing C.O. 365 of 2018, it appears the proposed facts which the defendant wanted to incorporate in its written statement by way of defense or by way of an amendment was not a new facts developed subsequently, rather it was already mentioned in its previously rejected amendment petition.

Further, this court is of view, if the proposed amendment in the Written Statement as sought by defendant if allowed then it would tantamount allowing the defendant to delete the admission made in paragraph 8 of its original written statement. The effect of such proposed amendment will displace the plaintiff completely from admission. Proposed amendment will introduce new cause of action and it will be a destructive pleading and likely to change the nature of the suit filed by the plaintiff and would take away the valuable right accrued in favour of the plaintiff.

A question arise in the mind of the Court, had the unregistered lease agreement was placed for registration immediate after the execution of the lease deed or agreement by the defendant as alleged, then such facts was very much within the knowledge of the defendant or its representatives. They could have instructed their lawyers about such facts and the lawyers could have advised them to rectify the written statement immediate after the filling of Written Statement on 18.12.2015 and they would not have waited for another two years in filling the earlier rejected amendment petition.

Therefore, permitting defendant to raise the same decided issue in the subsequent amendment petition is bared by Principle of Res Judicata. The Principle of Res Judicata applies also as between the two stages in the same litigation to this extent that a Court, whether the Trial Court a Higher Court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceeding as observed by Hon'ble Supreme Court in Arjun Singh (supra). Therefore, this Court holds the proposed amendment is barred by Principle of Res Judicata.

In view of the discussion made above this Court refrain itself from interfering with the impugned order as it does not suffer from any illegality or irregularity.

The revisional application is dismissed.

Connected application, if any, shall stand disposed of.

Interim order, if any, stands discharged.

In view of the order made above affidavits are not invited. Allegations made shall be deemed be denied.

There will be no order as to costs.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for be given to the parties upon compliance of the requisite formalities.

(**Kesang Doma Bhutia, J.**)