

Ct. 10.11
No. 2022
12
29
akb

C.O. 403 of 2019

**Kartick Chandra Pal & Ors.
-Versus-
Kamal Chandra Pal & Ors.**

**Mr. Gopal Pahari
Ms. Mandeep Kaur**

...For the Petitioners

Affidavit-of-service filed on behalf of the petitioner in Court today be kept with the record.

Despite service none turn up on behalf of the opposite parties.

In view of such, this Court proposes to proceed with the instant revisional application ex parte against the opposite parties.

Learned Advocate for the petitioners in support of the application at the very outset draws attention of this Court to the certified copy of the impugned order dated 27th November 2018. It is contended that while passing the impugned order learned Trial Court failed to visualise the true spirit of the application for amendment. It is further argued that the learned Trial Court equally failed to appreciate that the proposed amendment as sought for by the present petitioner/appellant is very much required for effective adjudication of the appeal before the learned Appellate Court, since, the facts as intended to be incorporated are based on the subsequent facts. It is thus argued that the present revisional application may be allowed after setting aside the impugned order.

Heard learned Advocate for the petitioner at

length. Perused the certified copy of the impugned order No. 28 dated 27th November 2018 as passed by the learned Civil Judge, Senior Division, Serampore, District – Hooghly. Also perused the photocopy of the certified copy of the amendment application as filed in Title Appeal No. 14 of 2016 before the learned Civil Judge, Senior Division, Serampore, District – Hooghly and the photocopy of the certified copy of the plaint as filed in Title Suit No. 128 of 2012 as well as the photocopy of the judgment dated 21st January 2015 as passed in the said suit.

On conjoint perusal of the entire materials as placed before this Court it reveals that the present petitioner, being the plaintiff filed Title Suit No. 760 of 2014 before the learned Trial Court praying for a decree for declaration and injunction. It reveals further that the said suit was however dismissed and challenging the said judgment of dismissal dated 21st January 2015 as passed by the learned Trial Court, the petitioner has preferred the aforementioned appeal before the aforementioned Appellate Court.

On perusal of the petition for amendment as filed under Order 6 Rule 17 of the Code of Civil Procedure before the learned Appellate Court, it reveals that the present petitioners made an endeavour to amend their plaint as per schedule of the said application on account of some subsequent events which occurred during pendency of the appeal, which the learned First Appellate Court by the impugned order did not allow. On perusal of the certified copy of the impugned order as passed by the learned First Appellate Court it reveals that while disposing of the said

amendment petition the said Court assigned reason that in the event such amendment is allowed that would linger the proceeding.

In considered view of this Court, the view as taken by the learned First Appellate Court while passing the impugned order is not sustainable in the eye of law. This Court is of further considered view that the learned First Appellate Court has taken a pedantic approach while disposing of the petition for amendment as filed by the petitioners before him. On perusal of the photocopy of the amendment application, more particularly, the schedule of amendment as mentioned therein it reveals that the petitioners/appellants before the First Appellate Court has sought to incorporate certain facts which according to the petitioners occurred during the pendency of the appeal and thus by way of amendment the present petitioners/appellants has sought to incorporate such facts to their plaint. This Court considers that the amendment as sought for by the petitioner/appellant before the learned First Appellate Court is very much innocuous and the same is absolutely necessary for effective adjudication of the appeal, being Title appeal No. 14 of 2016.

In view of the discussions made hereinabove, the present revisional application deserves to be allowed. As a result the instant revisional application succeeds.

The impugned order No. 28 dated 27th November 2018 as passed in Title Appeal No. 14 of 2016 arising out of Title Suit No. 88 of 2013 by the learned Civil Judge, Senior Division, Serampore, District – Hooghly is hereby set aside.

Consequently the petition for amendment as filed on 3rd May 2018 by the petitioners/appellants in the aforementioned Court stands hereby allowed.

Let a copy of this order be forwarded to the learned First Appellate Court below with a direction to the said Appellate Court to grant opportunity to the present opposite parties/defendants to file their additional written statement, if there be any within the time as prescribed by law.

The revisional application is thus disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

(Partha Sarathi Sen, J.)