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C.O. 404 of 2022

**Bilquis Banu
Vs
Jainab Khatoon & Ors**

Mr. Tarique Quasimuddin,
Mr. Abbas Ibrahim Khan, ... For the petitioner.

Mr. Golam Mustafa,
Mr. Tarasabjar Samanta,
.... For the opposite parties.

The subject matter of challenge in this revisional application is against the rejection of two petitions dated 7th November, 2019 and 16th March, 2021 relatable to recalling of DW 1 and amendment of written statement, filed by the petitioner.

Admittedly, it is a partition suit, where in plaintiffs/opposite parties have closed their evidence and defendants adduced evidence as DW 1. It is at this stage, the petitioner filed two petitions, referred hereinabove, one for recalling of DW 1 and another for amendment of the written statement.

By the proposed written amendment of the written statement, the entire effort of the petitioner was to eliminate some property from the scheduled properties of partition suit claiming the same to have acquired from the father of the petitioner on the strength of an oral heba.

While making elaboration of such point

pertaining to the proposed amendment of the written statement, Mr. Tarique Quasimuddin, learned advocate appearing for the petitioner refers some particulars, mentioned in the petition, filed by the petitioner praying for recalling of DW 1 so as to produce some documents.

Upon advertng to such petition, learned advocate for the petitioner submits that the order passed by High Court in **Writ Petition No. 6728 (W) of 2004** together with some other orders, passed by Collector, Deputy Commissioner of Excise on some subsequent dates, after the disposal of Writ Petition, being consequent upon the directions of the referred writ petition, are extremely necessary to unfold the defence of the petitioner/defendant, as the documents sought to be tendered in evidence were not in the possession of the petitioner and as such the same could not be produced and disclosed in the written statement for better elucidation of the defence, already disclosed in the written statement. As such the same should have been allowed to ensure best possible defence of the petitioner for perfectly addressing the issues in connection with pending partition suit.

It is contended by the learned advocate for the petitioner that the Court below has not duly appreciated the points, required to be addressed,

before rejecting those two petitions, and has rejected the same under an erroneous approach.

Per contra, Mr. Golam Mustafa, leaned advocate appearing for the opposite parties/plaintiffs supporting the order of the Court below submits that the Court below has rightly rejected the petitions, as it has been filed at a belated stage, simply to harass the opposite parties/plaintiffs.

The proposed amendment as well as recalling of DW 1 are very purposive simply to fish out evidence in the interest of putting new defence, so as to frustrate the claim for partition.

Having considered the submissions of both sides, it appears that petitioner has been described to be co-sharer of suit property, irrespective of the defence that may be set up in the written statement including amended written statement.

The documents sought to be tendered upon recalling DW 1 basically are relatable to order of the High Court passed in ***W.P. No. 6728 (W) of 2004***, and some other orders, as disclosed in the petition for recalling, being consequent upon the directions passed in such writ petition.

In the event of such documents being tendered in evidence, in accordance with the provisions of law, there is hardly any chance of causing any prejudice to the opposite parties/plaintiffs.

However, the proposed amendment could have been made much earlier and it has unnecessary resulted some unwanted harassment to opposite parties with such belated approach.

Though the relationship of the parties are not disputed, but the harassment suffered by the opposite parties/plaintiffs, at the instance of the petitioner, has to be adequately compensated by the petitioner.

The impugned order No. 114 dated 13th January, 2022 rejecting the prayer for recalling and amendment of the written statement vide petition dated 7th November, 2019 and 16th March, 2021, is set aside, subject to condition that petitioner shall deposit Rs. 15,000/- (Rs. fifteen thousand only) as compensatory costs to opposite parties/plaintiffs within a period of three weeks from date, and upon such deposit of costs being made, within the period mentioned hereinabove, the Court below would ensure fresh hearing for amendment of the written statement and recalling of DW-1, as proposed by petitioner, within three weeks thereafter, and after the disposal of the amendment of the written statement, followed by framing of additional issues, if there be any, recalling of DW 1 may be concluded within a further period of four weeks thereafter, and the suit may be decided expeditiously in accordance

with the provisions of law providing sufficient opportunity of hearing to either of the parties to this case, but without granting unnecessary adjournments, unless it is extremely unavoidable.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)