

04.05.2022
Item No.11
Ct. No.7
CHC
(disposed of)

**C.O.568 of 2022
(Physical Hearing)**

**Maya Roy
Vs.
Subhas Nag**

Mr. Rwitendra Banerjee
...for the petitioner

Mr. Debjit Mukherjee,
Mrs. Susmita Chatterjee
...for the opposite party

The subject-matter of challenge in this revisional application is against the rejection of a prayer for amendment of written statement.

Mr. Banerjee, learned advocate appearing for the petitioner/defendant adverting to schedule of the proposed amendment submits that the court below has not gone into the points, as disclosed in the proposed schedule of amendment, and most mechanically rejected the prayer for amendment.

It is contended by the learned advocate for the petitioner that the proposed amendment is nothing but a better elucidation of the defence, already set up in the written statement, filed by the petitioner/defendant.

Per contra, Mr. Mukherjee, learned advocate appearing for the opposite party/plaintiff submits that

proposed amendment has been made simply to harass the opposite party/plaintiff at a stage, when the evidence of plaintiff has already been closed and the defendant has already availed of the opportunity of making cross-examination of the plaintiff's witnesses.

It is also submitted by Mr. Mukherjee that in this case, trial has already commenced, and the trial court has rightly rejected the prayer for amendment of the written statement, as there was nothing mentioned in the petition seeking for amendment that in spite of due diligence, the defendant/petitioner could not have raised the matter earlier, without which prayer for proposed amendment is highly discouraging one.

Having considered the submission of both sides, it appears that suit is at the evidence stage, and the evidence of plaintiff has already been closed.

Incidentally, learned advocate for the petitioner has nothing to reveal that after the evidence of plaintiff was closed, the petitioner/defendant had suddenly acquired title of the suit property, which in spite of due diligence the petitioner/defendant could not have raised the matter earlier.

Though it is submitted by the learned advocate for the petitioner that the proposed amendment is simply to elucidate the defence already disclosed in the written statement, but in the absence of any specific disclosure of the date conferring right, title and interest

upon the petitioner/defendant in respect of the suit property, it is very difficult for the court to test the bona fide of the proposed amendment.

Admittedly, when it is the stage to adduce evidence by the petitioner/defendant, the Court is of the view that petitioner/defendant may adduce evidence, as per defence already disclosed in the written statement, if not already adduced.

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

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)