

09.06.2022
Item No.169
Ct. No.7
CHC
(disposed of)

C.O.842 of 2020

**Sri Panchugopal Manna
Vs.
Smt. Kubjarani Das & ors.**

Mr. Partha Pratim Roy,
Mr. Debayan Roy
...for the petitioner

Mr. Nilanjan Bhattacharjee,
Mr. Arpan Guha
...for the opposite party nos.3 to 5

The subject-matter of challenge in this revisional application is against the order dated 7th January, 2020, passed by learned Civil Judge (Senior Division), 2nd Court, at Howrah in Title Suit No.196 of 2005 rejecting the prayer for amendment under Order 6 Rule 17 C.P.C. in Title Suit No.196 of 2005.

Mr. Roy, learned advocate appearing for the petitioner/plaintiff submits that the proposed amendment was to incorporate subsequent event, happened during the pendency of this case.

It is contended by Mr. Roy that admittedly, it is a suit for declaration and injunction, and by the proposed amendment the nature and character of the suit will not be changed.

It is also contended by Mr. Roy that learned court below has erroneously rejected the prayer for amendment taking into account of commencement of

trial court thereby adhering to the proviso appended to Order 6 Rule 17 C.P.C. restricting the amendment after the commencement of the trial.

Mr. Bhattacharjee, learned advocate appearing for the opposite party nos.3 to 5 disputes with the proposed amendment submitting that it is purely harassing and intended to fill up the lacuna, revealed in the cross-examination of P.W.1, wherein plaintiff himself admitted that said iron gate over the alleged pathway had been installed during the pendency of suit, vide his cross-examination dated 15th January, 2018.

Thus, it is contended by the learned advocate for the opposite party nos.3 to 5/defendants that the installation of the gate was very much within the knowledge of the plaintiff, which the plaintiff gathered the same in January, 2018, but the prayer for proposed amendment has been made after P.W.1 was cross-examined in this case.

It is also submitted by the learned advocate for the opposite party nos.3 to 5 that it is piecemeal amendment, and this should be discouraged. The discretion thus exercised by the court below while rejecting the prayer for proposed amendment, according to learned advocate for the opposite party nos.3 to 5, must go unaltered, as the proposed amendment is purely harassing and mala fide one.

Having considered the submission of both sides, it appears that the opposite party nos.3 to 5/defendants have raised objection against the proposed amendment attracting the proviso appended to Order 6 Rule 17 C.P.C. thereby alleging that in spite of having gathered knowledge sometime in January, 2018, as regards the proposed amendment, the petitioner/plaintiff upon due exercise of his diligence did not promptly bring it to the notice of the court proposing the proposed amendment. The trial obviously has commenced.

True it is that proposed amendment has been belatedly filed, but there must be an end of litigation, and in that view of the matter, the controversy surfaced over the alleged pathway, and the alleged installation of the grill gate by the alleged parties to this case, may not be effectively adjudicated upon during the trial of this case.

It is also more true that upon filing such belatedly amendment, even after commencement of the trial, there has been serious hardship, and harassment caused to the opposite parties, which must be taken in view upon saddling compensatory costs.

Upon perusal of proposed schedule of amendment, it appears that the proposed amendment would, however, not cause change in the nature and character of the suit.

For the discussions made hereinabove, the impugned order is set aside. The proposed amendment be allowed with a cost of Rs.15,000/-(Rupees Fifteen Thousand) to be paid by petitioner/plaintiff to defendants/opposite party nos.3 to 5 within three weeks from the date of this order.

The amended copy of the plaint may be furnished within a week after the deposition of the costs, as mentioned hereinabove.

Upon depositing of such costs, opposite party nos.3 to 5/defendants would be at liberty to file additional written statement to controvert the proposed amendment.

The learned court below, is, however, free to frame additional issue, if needed, over the issue of proposed amendment for the proper adjudication of the matter in controversy.

This would not prevent the opposite party nos.3 to 5/defendants to challenge the proposed amendment upon subjecting the witnesses already examined for the plaintiff for further cross-examination, if any.

Bearing in mind the long pendency of this litigation, the court below is directed to ensure expeditious disposal of the suit adhering to the provisions of law, without granting unnecessary adjournment, unless it is extremely unavoidable.

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.)