

17.08.2022
Item No.4
Ct. No.7
CHC
(disposed of)

C.O.664 of 2022
IA NO: CAN/2/2022
Ram Ratan Singh
Vs.
Sri Gautam Kumar Basu & ors.

Mr. Jagannath Ganguly

...for the petitioner

Mr. Shyamal Chakraborty,

Mr. Palash Goswami,

Mr. Debojyoti Mondal

...for the opposite parties

Affidavit-of-service furnished by the petitioner be taken on record.

The subject matter of challenge in this case is against the rejection of a prayer for amendment. Learned Judge, 5th Bench, Presidency Small Causes Court, at Calcutta in Ejectment Suit No.267 of 2004, rejected such amendment of written statement.

Admittedly, the petitioner seeking proposed amendment is the substituted legal heir of deceased defendant/tenant. The suit was instituted with a prayer for eviction against the original tenant, since deceased.

Further admitted position is that the deceased defendant/tenant suffered death sometime in 2017, after filing written statement, and also adducing evidence in the pending suit for eviction. After the demise of deceased tenant, the petitioner stepped into the shoes of deceased father as legal heir. Some of the

events, as disclosed in the proposed schedule of amendment were sought to be incorporated in the written statement alleging the same to be subsequent event. By the order impugned, the same was rejected.

Learned advocate appearing for the petitioner submits that the court below has mechanically rejected the prayer for amendment of the written statement without truly adverting to the facts disclosed in the proposed schedule of amendment, which are relatable to events happened subsequent to the demise father of the petitioner.

It is also contended that the proposed amendment is simply to elucidate the defence, already set up by the deceased father in the written statement previously filed in this case, and there will be no change in the nature and character of the suit, if the proposed amendment is allowed.

Per contra, Mr. Shyamal Chakraborty, learned advocate appearing for the opposite parties disputes with the submission of the petitioner submitting that proposed amendment may not be permitted to take place, as the admission already made by the father the petitioner has been sought to be withdrawn, which is contrary to law.

It is also submitted by the learned advocate for the opposite parties that proposed amendment is not at all needed, because the father of the petitioner has

already taken up such points in the written statement, and as such the proposed amendment is nothing but purposive one simply to cause delay to the disposal of this case.

As regards permissibility of withdrawal of statement disclosed in the written statement earlier, learned advocate for the opposite parties has relied upon a decision reported in **(2008) 7 Supreme Court Cases 85** delivered in the case ***Gautam Sarup versus Leela Jetly & ors.*** and being emboldened by such decision, submits that the statement already admitted by the defendant in the written statement already filed, may not be permitted to be withdrawn subsequently, in aid of an application under Order 6 Rule 17 C.P.C.

Having considered the submission of both sides, it appears that paragraph (i) of the written statement filed earlier by the deceased father of the petitioner discloses that one “Basudev Singh during his life time executed power of attorney in favour of one Ram Ratan Singh simply to look after his business. Said Ram Ratan Singh, being grandson of Basudev Singh had been carrying on business exclusively in the said premises.....”

Paragraph VII of the proposed amendment pertains to denial of the statement, already disclosed in written statement filed by the deceased father of the petitioner in paragraph (i) of the written statement.

In view of the ratio decided in the case of **Gautam Sarup (Supra)**, the same would be squarely applied over the facts and circumstances of the case.

Paragraph "VII" of the proposed schedule of amendment being relatable to the withdrawal of admission is thus not permitted to be incorporated in aid of Order 6 Rule 17 C.P.C.

It may be mentioned here on record that learned advocate appearing for the petitioner also proposes for deleting such portion from the proposed schedule of amendment, after allowing the rest two paragraphs of the proposed schedule of amendment, mentioned in paragraphs V and VI of schedule of proposed amendment.

Paragraphs "V" and "VI" have got no connection with respect to withdrawal of admission.

The proposed amendment as mentioned in paragraphs "V" and "VI" are relatable to events, reference of which has already been disclosed in the earlier written statement, filed by the deceased father of petitioner.

In that view of the matter, paragraphs "V" and "VI" may be taken to be explanatory of the defence already set up in the previous written statement filed by the deceased father of the petitioner. For the discussion made hereinabove, the proposed schedule of

amendment would surely not change the nature and character of the suit.

But more significant fact is that there has already been commencement of trial and the court has already collected evidence of both the parties. True it is, that there has been delay caused to seek the proposed amendment even after the prayer for substitution was allowed in favour of the petitioner, but that delay should not be critically looked and treated to be fatal for the purpose of this case, simply to put an end to the litigation. The harassment that has been caused to the opposite parties, by reason of such amendment being prayed for belatedly, needs to be saddled with some costs, though there has been no adequate exercise undertaken by the opposite parties at appropriate point of time.

The revisional application is thus disposed of upon setting aside the impugned order thereby permitting proposed amendment of written statement with regard to paragraphs mentioned in "V" and "VI" only as per schedule of proposed amendment after deleting Paragraph "VII" from the proposed schedule of amendment, subject to payment of costs of Rs.7,000/- (Rupees Seven Thousand) to opposite parties, to be paid to the learned advocate for the opposite parties appearing in the court below within fifteen (15) days, from the date of communication of this order.

The amended copy of written statement may be filed within one week thereafter upon depositing costs within the period stipulated hereinabove.

The court below is directed to accept amended copy of written statement after payment of cost.

Subsequent to acceptance of amended copy of written statement, both the parties are at their liberty to adduce additional evidence, if there be any.

This would not prevent the court from framing additional issues, if any, in accordance with the law.

As the suit has already been set for argument, the logical conclusion of the suit may be reached within four (04) months from the date of communication of this order, after undertaking the exercise mentioned hereinabove, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

The application being IA NO: CAN/2/2022 is also disposed of.

Petitioner is directed to make communication of this order to the learned court below as well as to the opposite parties and their learned advocate in the court below.

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.)

