

S/L 23
10.11.2022
Court No.652
SD

CO 1046 of 2020

Mrs. Shahala Iqbal & Anr.
Vs.
Sankar Das & Anr.

Mr. Tapas Kumar Majumdar
Mr. Partha Pratim Bhattacharjee

...for the Petitioners.

Mr. Sounak Bhattacharyya
Mr. Sounak Mandal

...for the Opposite Parties.

Being aggrieved by the order no.64 dated 13.12.2019 passed by the learned Civil Judge (Junior Division), 2nd Court, Alipore, South 24 Parganas in Title Suit No.455 of 2010, the present revisional application has been preferred.

The petitioners have contended that on 16.02.2010, the opposite parties/plaintiffs filed the aforesaid suit and the subject matter of the suit property has been described in the schedule to the plaint. In the said suit, the plaintiffs have prayed for declaration and for permanent injunction restraining the defendants from obstructing the common passage running through the suit premises. The petitioners/defendants entered appearance in the said suit by filing written statement, and the suit is still pending for disposal.

In connection with the said suit, opposite parties/plaintiffs filed an application under Order VI Rule 17 of the Code praying for amendment. The petitioners/defendants filed written objection and in the said written objection it was stated that the suit was filed in the year 2010 and after lapse of eight years, the plaintiffs have filed the

application for amendment to incorporate certain irrelevant fact which is not permissible in the eye of law. Said application was initially rejected by the trial court. Plaintiff preferred revision before this court. Subsequently, after remand, by the impugned order dated 13.12.2019, the trial court was pleased to allow the plaintiffs' amendment application with a cost of Rs.5,000/-.

Mr. Tapas Kumar Majumdar, learned counsel appearing on behalf of the petitioners, submits that the learned trial court acted illegally and with material irregularity in allowing the said application for amendment mechanically without considering the fact that the suit was filed in the year 2010 and the amendment application was filed after lapse of eight years. The learned trial court failed to appreciate that by way of amendment the persons whom the plaintiffs want to be incorporated are not required to be added as a party because most of the persons sold their shares to the defendants/petitioners and their predecessors and naturally they do not have any right, title and interest in the suit property. The said amendment is not at all required to decide the real question in controversy. The learned trial court also failed to take into account that no explanation of delay has been given by the plaintiffs/opposite parties while filing the aforesaid application for amendment. Accordingly, the petitioners have prayed for setting aside the aforesaid order.

Mr. Saunak Bhattacharyya, learned counsel appearing on behalf of the opposite parties, submits that earlier, being

aggrieved by the order of rejection passed by the trial court in not allowing plaintiffs' present application for amendment, the plaintiffs/petitioners had preferred revisional application being CO 3426 of 2019.

In the said revisional application, it was also argued on behalf of the opposite parties (the petitioners herein) that belated amendment prayer was rightly rejected by the trial court particularly in view of the directions for expeditious hearing of the suit passed by this court.

While disposing of the said revisional application, the coordinate Bench of this Court was pleased to observe as follows:-

“It is seen that the trial court did not advert to the merits of the amendment application at all in rejecting the same, since there was a direction for expeditious disposal of the suit passed by this Court. Such a direction does not debar the trial court from adverting to the merits of an amendment application filed before it, although the time for disposal of the same should be expeditious, in deference to the direction given by this Court. Merely because a direction is subsisting, that does not mean that the trial court would reject a matter without adjudicating the same on merits, merely citing such direction. Moreover, learned counsel for the petitioner is right in arguing that the proviso to Order VI Rule 17 of the Code of Civil Procedure is not applicable, since the peremptory hearing of the suit has not yet started and mere delay, as is well-settled, is not a ground for not entertaining an application for amendment of the plaint.

In such view of the matter, the impugned order suffers from jurisdictional error.

Accordingly, C.O. No.3426 of 2019 is allowed, thereby setting aside the impugned order and directing the trial court to decide and dispose of the amendment application filed by the petitioner in connection with Title Suit No. 455 of 2010, as expeditiously as possible, after giving an opportunity of hearing to both sides and without granting any unnecessary adjournment to either side, positively within December 15, 2019.”

After the aforesaid order passed by this Court, the learned trial court had taken the amendment application for hearing afresh and after hearing both the parties, the learned trial court was pleased to pass the impugned order allowing the defendant's prayer for amendment.

Mr. Bhattacharyya further submits that the learned trial court has not committed any error in allowing the said application for amendment. However, this Court may fix a time-frame by which the suit may be disposed of by the trial court.

Having considered the aforesaid facts and circumstances of the case and the schedule of amendment along with written objection filed by defendant against amendment petition, it appears that defendant's main objection against amendment petition relates to delayed filing and that the persons, whom plaintiff wants to add as party are not necessary party and that if the amendment is allowed, it will change, nature and character of the suit and that the statements which plaintiffs want to incorporate by way of amendment are all false. Petitioner has not explained

, how the proposed amendment, if allowed, will change the nature and character of the suit.

In ***Ragu Thilak D-John Vs. S. Rayappan & others*** reported in **(2001) 2 SCC 472**, Apex Court held in Para 6 as follows:-

“6. If the aforesaid test is applied in the instant case, the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case, as is evident from the perusal of averments made in paras 8(a) to 8(f) of the plaint which were sought to be incorporated by way of amendment. We feel that in the circumstances of the case the plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed for.”

In ***Mahila Ramkali Devi and others Vs. Nandram & others*** reported in **(AIR) 2015 SC 2270** Apex Court further held in para 20 as follows:-

“20. It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting mala fide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.”

Here in the present case there is nothing to show that proposed amendment has been filed with *malafide* intention or that if it is allowed, it will cause such injury to opposite party which cannot be compensated for by an order of cost.

On the contrary proposed amendment qualifies factors which are to be taken into consideration while dealing with applications for amendments which has been stated in a salutary judgment by the Apex Court in Para 63 in the matter of ***Revajeetu Builders and Developers Vs.***

Narayanaswamy and sons and others reported in **(2009) 10 SCC 84** are as follows:-

“On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

As regards defendant's allegation of addition of unnecessary party it is also settled position of law that the plaintiff is the *dominus litis* of the suit and that it is the plaintiff who is to decide against whom he wants to fight or and against whom he or does not want to fight. Accordingly I find that the proposed amendment if allowed the defendant will not have any cause to prejudice and trial court also given liberty to defendant to file additional written statement. However, the defendant / petitioner have shown their dissatisfaction about the delay caused in disposal of the said suit pending before the trial court, since the suit was filed in 2010 and it is still pending.

In view of the aforesaid facts and circumstances of the case, the revisional application being CO 1046 of 2020 is dismissed.

However, the learned trial court is directed to make every endeavour for expeditious disposal of the suit and to dispose of the entire proceeding of the suit preferably within a period of one year from the date of communication of the order.

There will be no order as to costs.

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

(Ajoy Kumar Mukherjee, J.)