

16.09.2022
Item No.5
Ct. No.7
CHC
(disposed of)

C.O.828 of 2022

**Arun Kumar Singh
Vs.
Sri Amit Kumar Chamaria & anr.**

Mr. Saptangsu Basu, Senior Advocate
Mr. M. P. Gupta,
Mr. Chandan Mondal,
Ms. Antara Panja
...for the petitioner

Mr. Mainak Bose,
Mr. Sunil Gupta,
Mr. Pranav Sharma
...for the opposite parties

The subject-matter of challenge in this case is against an amendment petition being rejected by the court below.

Mr. Basu, learned Senior Advocate frankly submits that there has been an amendment application earlier filed on 7th March, 2018, which has been rejected by the court below.

The first and foremost contention of Mr. Basu, as regards previous rejection of the proposed amendment, is non consideration of facts disclosed in the schedule of proposed amendment on the simple score that cross-examination of opposite parties has already been closed. Evidence has been adduced in connection with disposal of an application under Section 7(2) of the W.B.P.T. Act. There has been no challenge thereafter against such rejection of prayer for amendment.

Subsequently, fresh amendment application was filed on 19th July, 2018, which was rejected by order No.109 dated 18th February, 2022, by learned Civil Judge (Junior Division), 1st Court, Howrah, in Title Suit No.579 of 2015. The ground of rejection, as set forth in order impugned is previous rejection of amendment petition taking alleged selfsame ground, closure of the cross-examination of opposite parties, and admission of the tenant in the cross-examination denying existence of any dispute as to the relationship between the parties.

Mr. Basu adverting to the copy of the application under Section 7(2) of the W.B.P.T. Act submits that relationship has been challenged in the original application under Section 7(2) of the W.B.P.T. Act since beginning, and for the determination of such issue, evidence has been allowed to be adduced.

It is thus contended by Mr. Basu, upon adverting to the facts disclosed in amendment petition that the court below has rejected the prayer for amendment giving precedence to the technicalities.

Per contra, Mr. Mainak Bose, learned advocate appearing for the opposite parties/landlords submits that when there has been admission disclosed in the cross-examination of the opposite parties, the proposed amendment is to nullify the admission, as revealed in the cross-examination, and thus the entire purpose of

amendment is to fill up the lacuna, and that too at belated stage, when cross-examination of tenant is over.

Mr. Mainak Bose, learned advocate for the opposite parties supporting the order of the court below submits that in view of the previous rejection of the selfsame prayer, and disclosure of admission revealed in the cross-examination of opposite parties, there lies nothing to be interfered with in the impugned order.

The settled proposition of law is very clear that there is no impediment to seek for amendment for incorporation of some pertinent facts relatable to the question raised in petition under Section 7(2) of the W.B.P.T. Act. When there has already been averment taken in the petition under Section 7(2) of W.B.P.T. Act, disputing with the relationship between the parties, the same issue need not be reagitated afresh taking a fresh amendment, as has been chosen in this case by the petitioner.

Mr. Basu, learned Senior Advocate in such context proposes for making consideration of prayer for amendment in context with the schedule of amendment, mentioned in serial no. (a), (d) and (e), and further proposes for foregoing the paragraphs, mentioned in the serial no.(b) and (c) of schedule of amendment petition, dated 19th July, 2018.

Upon perusal of the rest of the paragraphs of the schedule of the amendment, other than (b) and (c), this Court is of the view that there will be no change in the nature and character of the pending litigation. The admission, if there be any, in the cross-examination of tenant will not be washed away by the proposed amendment, specifically disclosed in paragraphs (a), (d) and (e) of schedule of amendment petition, dated 19th July, 2018.

Accordingly, no further elaboration is necessary on such issue.

The revisional application is thus disposed of upon setting aside the order dated 18th February, 2022, passed by learned Civil Judge (Junior Division), 1st Court, at Howrah in Title Suit No.579 of 2015.

Consequently, the proposed amendment is allowed with respect to paragraphs shown in serial nos. (a), (d) and (e) of schedule of amendment petition, dated 19th July, 2018.

The amended copy of application under Section 7(2) of the W.B.P.T. Act may be supplied to the opposite parties within one week after the Puja Vacation of the court below.

This would not however, prevent the petitioner to adduce additional evidence, if any, in connection with application under Section 7(2) of the W.B.P.T. Act,

upon restricting to the schedule of the amendment, as allowed hereinabove by this order.

The opposite parties have every right to cross-examine any witnesses, if examined on recall, in connection with application under Section 7(2) of the W.B.P.T. Act.

The revisional application is thus disposed of.

Parties are directed to make communication of this order to the learned 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.)