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C.O. 1034 of 2022

**Md. Altaf & Ors
Vs
Sk. Idris**

Mr. Tarique Quazimuddin,
Md. Irshad Yaash,
Md. Faizam Yakub, ... For the petitioners.

Mr. Souri Ghoshal,
Ms. Soumashree Ghosh,
Mr. Prabhat kumar Singh,
.... For the opposite party.

Affidavit of service filed in court today be kept
with the record.

The subject matter of challenge in this
revisional application is against the order dated 15th
March, 2022 passed by learned Civil Judge (Junior
Division), 4th Court, Howrah in Title Suit No. 1585 of
2017 rejecting the amendment under Order 6 Rule
17 CPC.

Mr. Tarique Quazimuddin, learned advocate for
the petitioners/landlords submits that there has
been some inadvertent mistake in mentioning the
exact description of the suit premises, wherefrom the
opposite party/tenant has been sought to be evicted,
simply by deleting the word 'G.T. Road', but the Court
below ought not to have refused the prayer for
amendment.

Upon advertng to the copy of the notice of

eviction, together with the cause title of the plaint and the schedule of the plaint, learned advocate for the petitioners submits that mere deletion of the word G.T. Road, either in the schedule of the plaint, or cause title of the plaint, in context with the notice of eviction already issued for the purpose, would hardly matter so as to identify the suit premises, by the given boundaries of suit premises, mentioned in four sides of scheduled property.

It is thus contended by the learned advocate for the petitioners that court below under an erroneous approach has refused to allow the prayer for proposed amendment.

Per contra, learned advocate appearing for the opposite party/tenant submits that there has been material suppression of facts, while proposing for amendment, and in the event of amendment being allowed, the defence already set up by the opposite party, vide its written statement, may suffer serious set blow.

It is also contended that in the written statement already furnished, the defendant/tenant has already disputed that he is not residing in the address, wherefrom he has been sought to be evicted, though he has received notice of eviction.

It is also contended that notice of eviction has been served in a address, other than the address of

suit premises, wherefrom he has been sought to be evicted.

Having considered the submissions of both sides, it appears that the proposed amendment was to identify the suit property more precisely, and there has been some inadvertent mistake committed in depicting the suit premises furnishing full particulars of the suit premises including the road, in which the suit premises is situated. When the notice of eviction has already been received by the opposite party/defendant, it may be presumed that suit has been instituted with sufficient knowledge of the defendant.

In the event of the proposed amendment being allowed, the opposite party/defendant would not be remediless, as defendant would be provided with the scope to controvert the amendment upon filing additional written statement.

That being the position, there is hardly any scope of claiming any prejudice with respect to the defence already disclosed in the written statement, filed by the opposite party/defendant.

Since there has been mistake committed by the petitioners/plaintiffs in perfectly and properly describing the suit premises, which has perhaps resulted some harassment on the part of the opposite party/defendant/tenant, such harassment has to be

adequately compensated in terms of money to opposite party opposing the amendment.

The impugned order refusing to allow amendment is set aside, subject to the condition that the petitioners/landlords shall deposit Rs.7000/- (Rupees Seven Thousand only) within a fortnight from the date of this order, to opposite party. Upon such deposit of costs being made within the period mentioned hereinabove, the proposed amendment may be allowed, permitting the opposite party/defendant to furnish additional written statement in accordance with provisions of law within three weeks thereafter.

This would not, however, prevent the Court below to ensure expeditious disposal of the suit, and opposite party/defendant/tenant is at liberty to dispute with the schedule of suit premises, even after the plaint being amended, taking all such points, as available under the provisions of law.

The points, if raised by the defendant, may be resolved by the court below at the time of final hearing of the suit in accordance with law.

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

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)