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C.O. 1052 of 2022

**Tinkari Majee & Ors
Vs
Dibakar Majee & Anr**

Mr. Rwitendra Banerjee,
Mr. Sougata Mitra,
Ms. Ankita Dey, ... For the petitioners.

Mr. Rajdeep Roy,
Mr. Madhusudan Mondal,
... For the opposite parties.

The subject matter of challenge in this revisional application is against order dated 16th March, 2022 passed by learned Civil Judge (Junior Division), Raghunathpur in Title Suit No. 26 of 2019 rejecting the prayer for amendment of the written statement.

Mr. Rwitendra Banerjee, learned advocate appearing for the petitioners/defendants submits that proposed amendment will not change the nature and character of the suit, and it is simply in elucidation of defence already set up in the written statement, filed by the petitioners/defendants. Mr. Banerjee in support of his stand draws attention of this Court to the prayer portion of the plaint, wherein the opposite parties/plaintiffs have prayed for recovery of possession of the suit property.

It is also brought to the notice of the Court to para 17 of the written statement, filed by the

petitioners/defendants, wherein defendants have claimed their actual possession over the suit land.

The proposed schedule of amendment appearing at page 32 of the instant revisional application is relatable to an alleged claim of exclusive possession based on adverse possession over the entire subject property.

Per contra, Mr. Rajdeep Roy, learned advocate appearing for the opposite parties supporting the order of the Court below submits that the Court below has rightly rejected the prayer for amendment of the written statement upon attracting the proviso appended to Order 6 Rule 17 of the Code of Civil Procedure, as the due diligence, supposed to be exercised by the petitioners, could not be exercised at the appropriate point of time. It is further submitted by the learned advocate for the opposite parties/plaintiffs that when there has been commencement of the trial, the prayer for proposed amendment should not be allowed.

Having considered the submissions of both the sides, it appears that the rejection of the prayer of the amendment of the written statement, made by the Court below, is purely upon attracting the proviso appended to Order 6 Rule 17 of the CPC.

This is a case wherein the plaintiffs/opposite parties have prayed for recovery of possession,

meaning thereby that the possession of suit property is a disputed one. As per the case made out by the defendants/petitioners, they claim to be in actual possession of the entire subject property, what is specifically disclosed in para 17 of the written statement. By the proposed amendment, it appears that petitioners simply wanted to elucidate the defence in respect of their claim of possession by narrating the story of long adverse possession over the subject property.

Thus the nature and character of the suit will not be changed. It is true that there has been commencement of trial, and the suit is appearing at the stage of cross-examination of PW-1. Since there has been delay caused in approaching the Court in exercise of due diligence on the part of the petitioners, the same should not be treated to be one and only ground for rejection of the amendment of the written statement.

The point thus raised by the petitioners by the proposed amendment, if not allowed to be incorporated, there may not be an end of the litigation.

The harassment suffered by the plaintiffs/opposite parties, however, needs to be compensated in terms of the money.

The revisional application is thus disposed of

upon setting aside the order dated 16th March, 2022 passed by learned Civil Judge (Junior Division), Raghunathpur in Title Suit No. 26 of 2019 subject to payment of costs of Rs. 10,000/- to plaintiffs/opposite parties within ten (10) days from the date of communication of this order.

Upon deposition of such costs, as referred hereinabove, the written statement of the petitioners/defendants may be amended within three (03) days thereafter furnishing a copy of amended written statement after supplying a copy to the other side.

This would not, however, prevent the Court below from framing an additional issue, if any, in accordance with law.

Since the suit has already been set for peremptory hearing, the logical conclusion of the suit may be expedited providing sufficient opportunities of hearing to either of the parties to this case, but without granting unnecessary adjournments, unless it is extremely unavoidable.

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)

