

14.06.2022
Item No.3
Ct. No.7
CHC
(disposed of)

C.O. 1198 of 2022

Ajoy Halder
Vs.
Sri Samir Mondal & ors.

Mr. Siva Prosad Ghose
...for the petitioner

Ms. Anyasha Das
...for the opposite party no.1

The subject-matter of challenge in this revisional application is against the proposed amendment being allowed.

By the proposed amendment, the plaintiff/opposite party no.1 sought to incorporate some facts that the sole tenant, Anath Bandhu Halder had died on 23rd August, 2016, and his legal heirs had no right to sue in the suit tenancy, as it was a non-residential tenancy, and further that no tenancy had been created with the legal heirs left by Anath Bandhu Halder, the original tenant by the plaintiff/opposite party no.1.

Learned advocate appearing for the petitioner/defendant submits that originally the prayer

for substitution, on the demise of the original tenant, was allowed on 9th February, 2018, bringing the name of Ajoy Halder being the eldest son of original tenant, leaving aside other legal heirs.

It is contended by the learned advocate for the petitioner that after three years, the opposite party no.1/plaintiff filed one petition seeking order of the court below so that the substituted defendant could be directed to furnish the name of other legal heirs, if there be any, left behind by original tenant, Anath Bandhu Halder.

Adverting to the objection petition, filed by the petitioner/defendant, against such petition dated 18th March, 2021, learned advocate appearing for petitioner/defendant submits that in the objection petition, substituted defendant already disclosed the name of the legal heirs of original tenant requiring substitution in the case.

It is also contended by the learned advocate for the petitioner that despite the disclosure of the name of legal heirs of original tenant, which was made pursuant to the petition being filed by the plaintiff/opposite party, the court below allowed the proposed amendment being oblivious of such disclosure, revealed in the objection filed by the

petitioner/defendant thereby causing serious prejudice to petitioner/defendant.

Per contra, Ms. Anyasha Das, learned advocate appearing for the plaintiff/opposite party no.1 disputing with the submission advanced by the learned advocate for the petitioner/defendant submits that by the previous substitution, the name of two sons of original tenant have already been brought on record doing substitution necessary under the law.

Supporting the order of the court below, as regards the prayer for amendment being allowed, learned advocate for the opposite party no.1/plaintiff submits that since it was a non-residential tenancy, plaintiff/opposite party no.1 could not be made to bring all the legal heirs, left behind by the original tenant of the suit premises, irrespective of the application being previously filed by the plaintiff/opposite party no.1 seeking direction from court, so that the petitioner/defendant may be made to furnish the name of legal heirs of original requiring substitution.

According to learned advocate appearing for the opposite party no.1/plaintiff, there is nothing left in the impugned order requiring interference by this Court.

Having considered the submission of both sides, it appears that admittedly, the prayer for substitution was allowed on the demise of the original tenant, when the plaintiff/opposite party no.1 preferred to bring on record legal heirs upon exercise of his choice of plaintiff/opposite party no.1, without bringing all the legal heirs and representatives left by original tenant. It is on 18th March, 2021, the plaintiff/opposite party no.1 suddenly filed a petition soliciting a direction from the court below so that the petitioner/defendant could be made to furnish the name of all the legal heirs of original tenant including widow of the deceased original tenant requiring substitution.

In the objection petition, filed by the petitioner/defendant, the name of all legal heirs left by the original tenant was disclosed. Therefore, it is thus clear that the petitioner/defendant disclosed the name of legal heirs, left behind by the original tenant on the asking of the plaintiff/opposite party no.1 vide its petition dated 18th March, 2021. The learned court below, while granting the prayer for amendment had no occasion to look into such aspect with respect to the petition being filed by the plaintiff/opposite party no.1 dated 18th March, 2021, and the objection filed therefor revealing the name of all the legal heirs left behind by the original tenant.

In that view of the matter, the prayer for amendment appears to have not been done going by the facts disclosed in the objection filed by the petitioner/defendant, on the asking of plaintiff/opposite party no.1 vide its petition dated 18th March, 2021. The impugned order as such, is not sustainable.

The impugned order is thus set aside with a direction upon the court below to hear out the same afresh within six (06) weeks from the date of communication of this order to the court below, bearing in mind the disclosure of the defendant/petitioner, as regards the name of legal heirs requiring substitution, on the asking of the opposite party no.1/plaintiff vide its petition dated 18th March, 2021 and decide the issue pertaining to the proposed amendment afresh giving an opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

While endeavouring such exercise, this would not however, prevent the opposite party no.1/plaintiff from establishing the nature and status of the disputed tenancy, held by the original tenant, in accordance with the provisions of the law.

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

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.)