

13.12.2022
Item No.1
Ct. No.7
CHC
(disposed of)

C.O.1291 of 2022

Sri Swapan Kumar Banerjee
Vs.
Smt. Pushpa Devi Saraf (Deceased) Vishwambhar
Dayal Saraf, representative of The Estate of
deceased defendant

Mr. Biswarup Biswas,
Mrs. Atreyee De (Ganguly)
...for the petitioner

Mr. Arif Ali,
Mr. Arnab Sardar
...for the opposite party

Subject-matter of challenge in this case is against the rejection of an application praying for amendment under Order 6 Rule 17 C.P.C.

Mr. Biswarup Biswas, learned advocate appearing for the petitioner submits that the proposed amendment is relatable to subsequent event, consequent upon the death of erstwhile defendant/tenant, and such subsequent even has to be incorporated by an amendment.

It is further submitted that the court below has not appropriately gone into the facts while making rejection of the prayer for amendment.

Mr. Biswas, learned advocate relies upon a decision reported in **2019 (2) CHN (Cal) 441** delivered in the case of ***Chhanda Mazumdar vs. Naba Kumar***

Mazumdar to submit that since the suit was initiated for eviction of tenant, who admittedly died, and after the demise of the original tenant, the present defendans claimed to have inherited the tenancy from the original tenant, there would be no change in the nature and character of the suit including its cause of action in the event of proposed amendment being allowed.

When opposite party inherited tenancy from the original tenant, the subsequent event intending to incorporate provisions available under Section 2(g) of the West Bengal Premises Tenancy Act, against the substituted defendants, should not be refused for the delay being caused, Mr. Biswas argues.

Admittedly, a suit for eviction was instituted under Section 7 of the Premises Tenancy Act availing the grounds found in Section 6 of the Premises Tenancy Act. The erstwhile defendant/tenant contested the suit filing written statement, and thereafter, left this world.

The opposite party has already been allowed to be substituted as legal representatives of the deceased tenant in aid of Order 22 Rule 4A C.P.C. by order dated 18th September, 2021.

Mr. Arif Ali, learned advocate appearing for the opposite party disputes with the submission, raised by Mr. Biswas, replying to the effect that proposed amendment will change the nature and character of

the suit thereby making transition of the present character of the suit to a suit for eviction of a trespasser under the general laws, what has already been instituted under the provisions of West Bengal Premises Tenancy Act.

Mr. Ali, further submits supporting the order of the court below that proposed amendment is purposive and an exercise has been undertaken to evict the opposite party, who is legal heir of the original deceased tenant, availing the benefits of Section 2(g) of the W.B.P.T. Act, without proving the grounds taken in the pleadings under Section 6 of the W.B.P.T. Act.

The only point to be decided is whether the proposed amendment would bring about a change in the nature and character of the suit, i.e. from a suit under tenancy statute to one under the general laws (suit for eviction of trespasser or not).

Whenever a suit has been instituted under Section 7 of the W.B.P.T. Act after serving a notice to quit and taking grounds available under Section 6 of the W.B.P.T. Act, unless those grounds are proved in accordance with law, there may not be any automatic eviction of a tenant, unless contrary circumstances are there.

When it is the fundamental case of the opposite party that the opposite party has inherited the suit property from the original deceased tenant, and when

application under Order 22 Rule 4A C.P.C. has already been allowed, the proposed amendment allowing incorporation of Section 2(g) of the W.B.P.T. Act, if allowed, that would not dislodge the defendant/opposite party from their basic thrust, as disclosed in the written statement already filed in this case.

Invocation of provisions under Section 2(g) of W.B.P.T. Act, will, however, not outway the grounds already taken under Section 6 of the W.B.P.T. and, therefore, there is no scope for any change in nature and character of the suit, as apprehended by the opposite party. The contention thus expressed by the petitioner is without any basis, and accordingly not accepted. More so in the event of subsequent creation of tenancy, after the demise of erstwhile tenant/defendant, being proved, the provisions under Section 2(g) of W.B.P.T. Act may become infructuous.

When there has been already an order passed under Order 22 Rule 4A C.P.C. impleading opposite party in a suit for eviction under the West Bengal Premises Tenancy Act, the proposed amendment, if allowed, would not cause any prejudice to either of the parties to this case, and rather it would subserve the purpose of justice. Therefore, proposed amendment pertaining to subsequent event is consequential to the death of erstwhile tenant, who died on 15th February,

2020 paving the way for application under Order 22 Rule 4A C.P.C.

There has been substitution allowed on 18th September, 2021. Though Mr. Biswas submits that there has been no delay caused in proposing such amendment, but this Court is not prepared to accept such submission, as the moment when the application under Order 22 Rule 4A C.P.C. was allowed on 18th September, 2021, such application could have been taken up immediately thereafter. When the suit has already been set for peremptory hearing, there should have been same explanation provided for this belated approach of initiating proposed amendment.

The delay thus caused giving rise to the harassment of the opposite party, as such, needs to be redressed upon saddling some costs. The revisional application for the reasons disclosed hereinabove stands disposed of upon setting aside the impugned order.

The proposed amendment be allowed subject to payment of cost of Rs.7,000/- (Rupees Seven Thousand only), to be paid by petitioner within fortnight from the date of communication of this order to the court below.

Subject to deposition of the costs, the amended copy of the plaint may be filed within a week thereafter

upon supplying a copy of the same to the opposite party/defendant contesting the suit.

Additional written statement may be submitted thereafter by the opposite party/defendant within fortnight thereafter. Additional issue, if necessary, may be framed for the purpose.

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

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