

22.02.2022
Item No.8
Court No.18
AJ.

C.O. 1801 of 2019
(Through Video Conference)

Bilkas Sk.
-Vs-
Satyabati Mondal & Ors.

Mr. Rwitendra Banerjee,
Mr. Shibasis Chatterjee.
... for the petitioner.
Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal.
....for the opposite parties.

The defendant no. 1 in a suit for declaration being Title Suit No. 14 of 2015 pending before the Additional Court of learned Civil Judge (Junior Division) at Jangipur, District-Murshidabad is the petitioner of the revisional application under Article 227 of the Constitution of India.

The learned Trial Judge by the order impugned being Order No. 97 dated December 18, 2018 has dismissed the said application on the ground that the proposed amendment is not for the purpose of incorporating facts happening subsequent to the filing of the original written statement and it is also barred under the principle of estoppel.

Mr. Banerjee, learned advocate appearing on behalf of the petitioner submits that no doubt the trial of the suit has commenced but it has not progressed much as only the cross-examination of the P.W.₁ has just started. He further submits that to avoid multiplicity of proceedings, the proposed amendment of the written statement should have been allowed by the learned Trial Judge.

Mr. Roy, learned advocate appearing on behalf of the plaintiffs/opposite parties on the other hand submits that by the proposed amendment the defendant no.1 is trying to withdraw his admission made in the original written statement. He also submits that the amendment sought for is barred under the proviso appended to Order VI Rule 17 of the Code of Civil Procedure as admittedly the trial of the suit has commenced.

Heard learned advocate for the parties, perused the materials-on-record.

No doubt, the commencement of trial of the suit is a bar to allow prayer for amendment of pleadings unless it proved that in spite of due diligence, said amendment could not have been prayed for earlier, however the said restriction is not so inflexible that even when essential amendments in the pleadings are felt necessary to avoid multiplicity of proceedings, the Court cannot allow such amendment particularly when the trial of the suit has not progressed too far.

On perusal of the application for amendment, it appears that that amendment sought for under paragraph nos. 2, 3 and 4 of the schedule appended to the application for amendment are, if allowed, would be amounting to allowing the defendant no. 1 to withdraw his admission made in the original written statement. However, the amendment sought for in the rest of the paragraphs of the said schedule being paragraph nos. 1, 5, 6 and 7 are required to be incorporated in the written statement of the defendant

no. 1 to avoid multiplicity of proceedings between the parties, therefore, the defendant no. 1 is permitted to amend the written statement to incorporate the aforesaid paragraphs only therein.

The order impugned is modified to the extent indicated above.

The defendant no.1 shall file the amended written statement within two weeks from date.

C.O. 1801 of 2019 is disposed of without any order as to costs.

The suit is pending since 2015; the trial of the suit has already been commenced, the learned Trial Judge, therefore, is requested to make all endeavour to expedite the disposal of the same in accordance with law and in doing so shall not entertain prayer of the parties for any unnecessary adjournment.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)