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C.O. 1589 of 2022

**Prasanta Bose & Anr.
Vs
Sri Sanatan Ghosh**

Mr. Abhijit Ray,
Mr. Indrajit Sen,
Mr. Shubham Gupta.

... For the petitioners.

Mr. Sourav Sen,
Ms. Adrisnata Chakraborty.

... for the opposite party.

The impugned order dated 7.4.2022 passed by learned Civil Judge (Junior Division) 1s^t Court at Serampore, Hooghly in Title Suit No. 145 of 2016 rejecting the amendment is under challenge in this revisional application.

Upon advertng to the schedule of the proposed amendment appearing at page 22 annexed with the instant, revisional application, Mr. Abhijit Ray, learned advocate appearing for the petitioners submits that subsequent events pertaining to violation of an order granting injunction has been sought to be incorporated, and by which there will be no change in the nature and character of the suit.

According to the learned advocate for the petitioners, the Court has mechanically invited the proviso appended to Order 6 Rule 17 of the Code of Civil Procedure, stating that there has already been

commencement of the trial, but forgetting that in the meantime the plaintiff has not furnished any affidavit as yet under Order 18 Rule 4 of the Code of Civil Procedure so as to mark the commencement of trial.

Per contra Mr. Sourav Sen, learned advocate appearing opposite party disputes with the submission raised by the petitioners submitting that the applicability of the proviso appended to Order 6 Rule 17 of the Code of Civil Procedure is not there in the pre-amended Act.

More so, the petitioners seeking amendment was not diligent enough to incorporate such alleged facts, and further there is no prayer proposed in aid of introduction of the proposed amendment, Mr. Sen argues.

It is thus contended by Mr. Sen that it is a purely harrasive application and mala fide one, just to cause delay to the disposal of the suit.

Having considered the submission of both sides, it appears that the Court below rejected the prayer for amendment upon attracting the proviso appended to Order 6 Rule 17 of the Code of Civil Procedure on the premise that the facts, sought to be incorporated, could have been brought to the notice of the Court much earlier, and petitioners/plaintiffs were not diligent to exercise their power to that effect at the appropriate point of time.

Upon seeing the schedule of the proposed amendment, it appears that violation of an order allegedly caused by the opposite party/defendant has been sought to be introduced by the proposed amendment. The proposed amendment will not change the nature and character of the suit in any way whatsoever. True it is, there has been some harassment caused to the opposite party/defendant by reason of such delayed approach being exercised so as to incorporate the alleged facts in aid of Order 6 Rule 17 of the Code of Civil Procedure, but that should not be treated to one and only ground to reject the prayer for amendment. The harassment and hardship caused to the opposite party should be adequately compensated in terms of the money.

The impugned order dated 7.4.2022 passed in Title Suit No. 145 of 2016 is set aside, subject to payment of Rs. 5000/-, to be paid by the petitioners/plaintiffs to opposite party/defendant within 10 days from the date of communication of this order.

The prayer for proposed amendment be allowed giving liberty to file amended copy of the plaint with three days thereafter after depositing the costs, and upon filing receipt of payment of costs.

The opposite party/defendant may file additional written statement within a week thereafter.

This would not, however, prevent the court below to frame additional issue, if any, in accordance with provisions of law.

The logical conclusion of the suit may be made in a faster mode without granting any adjournment, 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)