

06.12.2022
Item No.2
Ct. No.7
CHC
(disposed of)

C.O.1603 of 2022

Ranjit Singh & anr.

Vs.

**Smt. Sipra Sarkar (since deceased), her legal heirs
Sushmita Chowdhury & ors.**

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

It appears that in my order dated 23.11.2022, in the cause title of the case, it has been inadvertently typed therein as “Sri Ranjit Singh & anr. vs. Smt. Sipra Srkar (since deceased), her legal heirs Sushmita Chowdhury & ors.” instead of “**Sri Ranjit Singh & anr. vs. Smt. Sipra Sarkar (since deceased), her legal heirs Sushmita Chowdhury & ors.**”. The same shall be corrected and read as “**Sri Ranjit Singh & anr. vs. Smt. Sipra Sarkar (since deceased), her legal heirs Sushmita Chowdhury & ors.**”.

The mistake is thus rectified. Other portions of the order shall remain unaltered.

Office is directed to incorporate necessary correction in the said order.

The subject-matter of challenge in this revisional application is against the rejection of a prayer for amendment petition, what was intended to incorporate some facts relatable to subsequent events happened during the pendency of an eviction suit.

Mr. Biswarup Biswas, learned advocate appearing for the petitioner submits that the Court below has not appropriately gone into the facts required to be looked into, while making rejection of the prayer for the amendment.

Admittedly, the plaintiff is the petitioner seeking eviction of sole defendant, upon resorting to the grounds available under Section 6 of the Premises Tenancy 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 property, i.e. from the suit under the special statute to one under the 'General Law' suit for eviction of trespasser, or not.

Mr. Biswarup Biswas, learned advocate appearing for the petitioners submits that proposed amendment would neither cause any change in the nature and character of the suit, nor would pave the way for application of the mischief, appended to proviso of Order 6 Rule 17 C.P.C.; because the proposed amendment relates to subsequent event, and the provisions incorporated in Section 2(g) of the W.B.P.T. Act would be applicable in the given set of facts, by operation of law.

As per submission disclosed by Mr. Biswas that plaintiffs have already adduced evidence in terms of the pleadings already submitted, and it is at the

subsequent stage of adducing evidence necessity to seek for proposed amendment arose, which should not be repudiated merely on the ground of delay being caused.

It is further submitted by Mr. Biswas that the erstwhile sole tenant already died and her three daughters have already been impleaded by way of substitution as per order of the Court, passed on 15th January, 2019. The original tenant left this world in 2018.

The order of this Court granting interim order after admission of this motion, and the subsequent extension of the interim order was communicated to the opposite parties issuing a notice. Despite being noticed, the opposite parties have not turned up even today. The opportunity thus extended several times goes unavailed of.

The point thus raised by the petitioners as such is considered, even in absence of the opposite parties.

The prayer for proposed amendment pertaining to subsequent event is consequential to the death of erstwhile tenant, who died in the year 2018. There has been substitution allowed impleading legal heirs of the deceased tenant on 15th January, 2019. The instant application proposing amendment was filed on 21st February, 2022. Therefore, there has been delay undoubtedly in initiating the prayer for proposed

amendment. Though petitioners gathered knowledge about the death of the sole tenant, as would be evident from the action from their initiation of the prayer for substitution, but no action could be taken for the proposed amendment immediately thereafter.

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 the eviction of the tenant, who admittedly died, and after the demise of the original tenant, the present defendants 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 including therein, in the event of proposed amendment being allowed. When opposite parties 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.

The revisional application is thus disposed of upon setting aside the impugned order thereby permitting the proposed amendment to be effected in the pleadings submitted by the petitioners/plaintiffs.

There will be compensatory cost of Rs.10,000/- (Rupees Ten Thousand only) to be paid by the

petitioners to the opposite parties within ten (10) days from the date of communication of this order to the court below, if the suit in the court below has not yet been set for *ex parte* hearing due to non appearance of the opposite parties/defendants.

The amended copy of the plaint may be furnished within three days after the date of communication of this order to the court below.

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

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

Petitioners are directed to make communication of this order to the learned court below as well as to the opposite parties and their learned advocate in 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.)