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C.O. 1672 of 2022

**Debasish Chandra
Vs
Smt. Gita Sarkar**

Mr. Prantick Ghosh,
Mr. Siddhartha Sarkar, ... for the petitioner.

Mr. Debasish Kundu,
Mr. Souma Subhra Roy,
Ms. Chayanika Singh,
... for the opposite party.

The subject matter of challenge in this revisional application is against the rejection of a prayer for amendment under Order 6 Rule 17 of the CPC.

Mr. Prantick Ghosh, learned advocate appearing for the petitioner submits that the Court below has not properly gone into the facts presented and pressed, and mechanically invited the proviso appended to Order 6 Rule 17 of the CPC, while rejecting the prayer for amendment.

It is submitted by learned advocate for the petitioner that in the affidavit of assets, the properties bequeathed by the testator of a Will have not been properly disclosed out of inadvertence.

By the proposed amendment, the properties involved in the Will of testator only have been sought to be incorporated simply to put an end to the litigation.

Per contra, Mr. Debasish Kundu, learned

advocate appearing for the opposite party supporting the order of the Court below submits that in a case, where there has already been commencement of trial, as the Court below has already examined one witness, the prayer for amendment should not be allowed, on mere asking, without sufficient explanation being provided in the application proposing amendment.

It is contended by the learned advocate for the opposite party that no explanation was offered behind the proposed amendment.

The instant probate proceeding was admittedly instituted in the year 2015. The affidavit of assets in connection with the instant proceeding was filed long before.

It is true that the properties involved in the Will bequeathed by the testator need to be included in the affidavit of assets, without which there cannot be proper adjudication, supposed to be made by the Court below, but at the same time there has to be sufficient explanation offered, as to what prompted the petitioner to make such inadvertent mistake.

In the absence of an explanation being offered, it cannot be easily ascertained whether there was sufficient exercise of due diligence, supposed to be made, on the part of the petitioner proposing amendment.

As has already discussed that in order to put an end to the litigation, the properties involved in the Will are necessary for fair adjudication, so, the prayer for proposed amendment, in the absence of an explanation being offered, has reasonably caused some harassment to the opposite party, which has to be taken care of granting sufficient costs.

The revisional application be disposed of upon setting aside the order dated 4th May, 2022 passed by Additional District Judge, Fast Track Court No. 5, Barasat in Other Suit No. 43 of 2015 subject to payment of costs of Rs. 10,000/- to be deposited to the opposite party within ten days from the date of this order.

Upon such costs, being deposited within the period mentioned above, the petitioner may be permitted to furnish amended copy of the affidavit of assets upon supplying a copy well in advance to the opposite party.

The additional DWs, if any, may be furnished within seven days thereafter.

This would not, however, prevent the Court below from framing any additional issues, if any, in accordance with the law.

Consequently, the prayer for proposed amendment is allowed.

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)