

11.08.2022
Item No.18
Ct. No.7
CHC
(disposed of)

C.O.1738 of 2022

Sri Pralay Chowdhury
Vs.
Smt. Sukla Ghosh

Mr. Amal Kanti Das,
Ms. Anyasha Das
...for the petitioner

Mr. Suprovat Bhattacharjee,
Mr. Hafizur Rahaman
...for the opposite party

The subject-matter of challenge in this revisional application is against the order dated 10th June, 2022, passed by learned Additional District Judge, at Sealdah, South 24 Parganas, in Title Appeal No.8 of 2021, rejecting the prayer for amendment.

Admittedly, the trial court granted decree of eviction upon describing the petitioner/appellant to be a licensee in a suit for eviction of license. The decision of the trial court granting decree of eviction was carried in appeal vide Title Appeal No.8 of 2021, referred hereinabove. In the pending appeal, the petitioner/appellant filed an application for amendment.

Mr. Amal Kanti Das, learned advocate appearing for the petitioner advertent to paragraphs- '14', '15' and '16' of the written statement submits that though, the

suit was instituted describing the petitioner to be a licensee, but in the written statement already filed petitioner/appellant has asserted his tenancy right in respect of the property under his possession.

By the proposed amendment, learned advocate for the petitioner submits that there will be no change in the nature and character of the suit, and it is purely to elucidate the stand already set up in the written statement filed by the petitioner/defendant.

It is contended by petitioner that the agreement executed between the parties since 31st May, 1991 and all subsequent agreements entered into between the parties are in essence tenancy agreement, though superficially they look to be agreement granting license to petitioner in respect of the subject premises. Since the learned court below in appeal has not properly gone into the facts presented and pressed in the proposed amendment there has been improper rejection of amendment petition mechanically holding that the trial court has already addressed the points raised in the proposed schedule of amendment.

Per contra, Mr. Suprovat Bhattacharjee, learned advocate appearing for the opposite party/respondent submits that there has been no explanation provided as to what prevented the petitioner from seeking such amendment at the appropriate time of trial.

It is thus submitted by Mr. Bhattacharjee that in the absence of any explanation being offered so as to reveal the due exercise of due diligence on the part of the petitioner, the proposed amendment should not be allowed, and it is purely harassive, and dilatory one simply to frustrate the decree, already granted in this case.

Upon perusal of the impugned order, it appears that the trial court has rejected the prayer for proposed amendment on the score that the trial court has already addressed the points disclosed in the proposed schedule of amendment, and as such, the proposed amendment was not necessary to set the controversy at rest.

The first appellate court is the last fact-finding court within the hierarchy of judiciary. The obligation to be discharged by first lower appellate court stands at higher pedestal, compared to trial court, while affirming or reversing a judgement of trial court. It is seen from the proposed schedule of amendment that the petitioner has reiterated the defence, already set up in the written statement thereby making elucidation of the defence. Petitioner has asserted, or rather reiterated that nature of agreement executed between the parties superficially may be looked to be a licence agreement, but it is purely in essence a tenancy agreement. Upon seeing text of the proposed schedule

of amendment, it appears that there would be no change in the nature and character of pending litigation between the parties.

Though an explanation regarding delay caused in proposing the amendment at a later stage ought to have been given, but that should not be critically viewed and treated to be a fatal for the purpose. When there has been no change in the nature and character of the suit, as has already discussed, in the event of proposed amendment being allowed, there will be no prejudice caused to the plaintiff/opposite party. But the harassment and hardship that has been suffered by the opposite party/plaintiff must be taken care of, which has to be saddled with some compensatory cost.

The impugned order is set a side subject to payment of Rs.10,000/- (Rupees Ten Thousand) as cost to opposite party/plaintiff to be deposited by petitioner/defendant within a fortnight from the date of communication of this order.

Upon depositing such cost within period mentioned hereinabove, petitioner may be permitted to file amended copy of written statement before the first lower appellate court, where the appeal is pending, giving a copy well in advance to the opposite party.

Consequently, the prayer for amendment of written statement is thus allowed with condition mentioned hereinabove.

Additional issue, if any, may be framed upon addressing the proposed schedule of amendment of written statement, if not already framed in the meantime.

This, would not, however, prevent the parties to adduce additional evidence, if any, to unfold the version of the plaint in order to put an end to the litigation permanently.

The revisional application is thus disposed of.

This Court reposes trust and confidence upon first lower appellate court that the pending appeal would be decided expeditiously without granting any unnecessary adjournment, unless it is extremely unavoidable.

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.)