

14.11.2022
Item No.4
Ct. No.7
CHC
(disposed of)

C.O.1981 of 2022

**Shila Roy & anr.
Vs.
Ratan Kumar Ghosh & anr.**

Mr. Abhijit Ray,
Mr. Shubham Gupta
...for the petitioners

Mr. Sukanta Chakraborty
...for the opposite parties

Affidavit-of-service furnished by the petitioners be taken on record.

Rejection of a prayer for amendment of the written statement is under challenge in this case.

Admittedly, Title Suit No.269 of 2015, is pending before learned Civil Judge (Junior Division), 1st Court, Alipore, South 24 Parganas, which was instituted in the year 2015. There is no controversy between the parties that previously the suit was posted for the *ex parte* hearing due to non appearance of the defendants.

It is suit for eviction of a licensee as per averments disclosed in the pleadings.

The *ex parte* hearing of the suit was challenged before this Court in C.O.2326 of 2021, which was disposed of on 22nd March, 2022, permitting the defendants to submit written statement within a certain period of time, with a cost of Rs.20,000/- and

further observation that suit may be expeditiously disposed of preferably within a period of 15 (fifteen) months from the date of communication of this order.

Mr. Abhijit Ray, learned advocate appearing for the petitioners adverting to paragraph-‘10’ of the written statement, furnished earlier, submits that the proposed amendment is nothing but it is in clarification of such previous averment, contained in paragraph-‘10’ of written statement, and that it will not change nature and character of the suit.

It is, further submitted by the learned advocate for the petitioners that moment when the written statement was filed, as per order of this Court, it was hurriedly filed, without covering all the points that ought to have been necessarily put in the written statement to ensure effective defence.

It is also submitted by the learned advocate for the petitioners that though there has been some little delay caused in proposing the amendment of written statement, but that should not be construed to be fatal, and an opportunity should be extended to petitioners to correct the written statement previously furnished.

Mr. Chakraborty, learned advocate appearing for the opposite parties/plaintiffs supporting the order of the court below submits that new facts have been

sought to be introduced with a view to change in the nature and character of the suit.

It is contended by Mr. Chakraborty that the proposed amendment of the written statement has been made after the cross-examination of P.W.1 was over.

Incidentally, it is submitted by Mr. Chakraborty that there is no such averment disclosed in the written statement, previously filed by the petitioners, wherein the petitioners have disputed with the description of the status of the defendants, made by the plaintiffs describing the defendants to be licensee in respect of the suit property.

Upon attracting the proviso appended to Order 6 Rule 17 C.P.C., Mr. Chakraborty further raises his argument submitting that mere filing of a petition proposing amendment without any sufficient explanation, would not automatically entitle the defendants to propose amendment of the written statement, even at a belated stage of the proceedings.

Having considered the submission of both sides, it appears that when the written statement was filed, may be with the order of this Court, the written statement admittedly had no specific plea disputing with the description of the status of the defendants, as described by the plaintiffs. There is some reflection of events in written statement, which are alleged to have

been taken place at the instance of opposite parties/plaintiffs pertaining to non granting of rent receipts to petitioners/defendants, the same, if considered for fair adjudication of the matter in controversy between the parties that would not cause any prejudice to opposite parties.

Upon perusal of the previous written statement, filed by the defendants, it appears that taking some grounds defendants have challenged the suit and the ultimate object of the written statement is to invite dismissal of the suit. Though, there has been no specific point raised disputing with the description of the status of the defendants, as described by the plaintiffs, but when the ultimate object of written statement is sufficient enough to reveal that it is directed against dismissal of suit upon disclosing certain points incorporated therein, the disclosure of the facts in the proposed schedule of amendment, would not cause any change in nature and character of the suit.

True it is there has been some delay caused in initiating the proposed amendment, but the more significant fact is that written statement was submitted by the defendants as per order of this Court with certain amount of cost.

Upon perusal of the schedule of the amendment, it appears that it will not change any nature and character of the suit .

There must be an end of litigation. The delay caused in proposing the amendment of the written statement in the given circumstances of the case and for the peculiarity of the case, should not be critically construed giving a hypertechnical approach. The mischief thus engrafted in the proviso appended to Order 6 Rule 17 C.P.C., for the reasons mentioned hereinabove, should be given a go by for the ends of justice.

Mr. Abhijit Ray, learned advocate appearing for the petitioners however, assures that if the written statement is allowed to be amended, the suit will revert back to the stage of cross-examination of the plaintiffs' witness, and there will be sincerest effort and cooperation to be extended, so that logical conclusion of the suit may be reached preferably within the stipulated period of time, as already ordered in C.O.2326 of 2021.

The impugned order is thus set aside permitting the petitioners/defendants to furnish amended copy of written statement before the court below within seven (07) days from the date of communication of this order, upon supplying a copy of the same well in advance to the petitioners, subject to the payment of cost of

Rs.30,000/- (Rupees Thirty Thousand), to be paid by petitioners within seven (07) days from the date of this order to opposite parties in the court below. Subject to the deposition of the cost within the period mentioned hereinabove, the amended copy of the written statement may be accepted.

This would not, however, prevent the court below to frame additional issues, if any, in view of the amended pleadings. Opposite parties/plaintiffs are given to adduce evidence, if necessary, upon recalling P.W.1 for the purpose.

It is, however, clarified that defendants are also permitted to adduce evidence during their turn after the closure of evidence of plaintiffs' witness, to set up defence in context with the pleadings disclosed in the amended copy of the written statement.

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

Parties are directed to make communication of this order to 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.)