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C.O. 2079 of 2022

**Sri Tanup Kumar Metya
Vs
Sri Radhasyam Maity & Anr**

Mr. Asish Chandra bagchi, Sr. Adv
Ms. Malyasree Maity, ... For the petitioner.

Sk. Rejaul Alam, ... For the opposite parties.

The subject matter of challenge in this case is against the rejection of a prayer for amendment of the written statement.

Mr. Asish Chandra Bagchi, learned senior advocate, being assisted by Ms. Malyasree Maity, learned advocate appearing for the petitioner submits that the court below has not gone into the facts disclosed in para 3 of the proposed amendment petition, and simply rejected the amendment upon attracting the proviso appended to Order 6 Rule 17 of the Code of Civil Procedure.

Mr. Bagchi further submits that by the proposed amendment, there will be no change in the nature and character of the litigation, which is basically for determination of proposed right of preemption taking the ground of co-shareship.

Per contra, learned advocate appearing for the

opposite party submits that there has been undue delay caused in filing the proposed amendment, and the court below has rightly rejected the prayer for amendment in this case, where there has already been commencement of trial.

It is contended by the learned advocate for the opposite party that in this case, not only the petitioner seeking preemption has concluded his evidence, but the opposite party seeking amendment of the written statement has also adduced one witness.

It is thus submitted by the learned advocate for the opposite party that a complete new case has been sought to be introduced, which is not permissible at this stage.

Having considered the submission of both sides, and upon perusal of the impugned order, it appears that the court below has rejected the prayer for proposed amendment upon attracting the proviso appended to Order 6 Rule 17 of the Code of Civil Procedure.

The only challenge offered by the opposite party against the proposed amendment is that there is no explanation offered regarding the proposed amendment, and the fact that there has already been commence of trial.

As per submission disclosed by the learned

advocate appearing for the opposite party, the preemption proposed is on the ground of co-sharership, and the petitioner by the proposed amendment disputes with the claim of preemption raising a plea that for the demarcated possession having been given to the vendor of the petitioner, there has been automatic secession of co-shareship, as claimed by the opposite party.

True, it is that the opposite party entered his appearance on 20th February, 2018, and thereafter written objection was filed on behalf of the petitioner proposing amendment. Though there has been a disclosure of fact mentioned in para 3 of the proposed schedule of the amendment, but it is not sufficient to explain the delay already caused in the proposed amendment.

Be that as it may, the proposed schedule of amendment in any case will not change the nature and character of the litigation.

It is also more true that there has been delay caused, which has not been sufficiently explained, and that has caused unnecessary hardship and harassment to the opposite party opposing the prayer.

There must be an end of litigation. Delay thus caused should not be critically viewed giving precedence to technicality.

In that view of the matter there will be no prejudice caused to the opposite party in the event of prayer for proposed amendment being allowed with cost.

The revisional application is disposed of upon setting aside the impugned order dated 2nd July, 2022, passed by the learned Civil Judge (Junior Division), 1st Court, Tamluk in Misc. Case 5 of 2018, subject to payment of cost of Rs.10,000/- (ten thousand) to the opposite party, to be paid by petitioner within a fortnight from the date of communication of this order to the court below.

Consequently the proposed amendment of the written statement be allowed.

Upon depositing such costs within the period mentioned hereinabove, the amended copy of the written statement may be furnished before the Court below within three days thereafter, upon supplying a copy well in advance to the learned advocate for the opposite party.

This would not, however, prevent the court below to frame additional issues, if any, in context with the proposed amendment.

Petitioner has every right to challenge the proposed amendment, if necessary, upon recalling any of the witnesses already examined by the petitioner in connection with proposed amendment.

Parties are directed to make communication of this order to the learned court below.

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)