

04.02.2022
Item No.3
Crt. No.11.
KB

**FAT 399 of 2019
with
IA No. CAN 1 of 2020
(Old No. CAN 1979 of 2020)
(Assigned)**

**Shaik Shajahan Hossain & Ors.
-Vs-
Md. Shahnawaz Khan & Anr.
(Via Video Conference)**

Mr. Tapas Kumar Manna
Ms. Anindita Majumdar
... For the Appellants.

Mr. Rudradeb Choudhuri
... For the Respondents.

The appellants have preferred an appeal against the judgement and decree passed by the Learned City Civil Court, IXth Bench at Calcutta in Title Suit No. 180 of 2015 dated 15.02.2019 with an application for condonation of 136 days delay.

This Court has perused the application for condonation of delay filed by the appellants and satisfied with the explanations as mentioned in the said application.

The delay of 136 days for filing the appeal is allowed.

IA No. CAN 1 of 2020 (Old No. CAN 1979 of 2020) is thus disposed of.

Now the appeal is taken up for hearing.

The appellant has filed the instant appeal against the Judgement and Decree passed by the Learned Judge IXth Bench, City Civil Court at Calcutta in Title Suit No.180 2015 dated 15th February, 2019.

In the said suit the appellant being the plaintiff had initially filed an application under Order VI Rule 17 of the C.P.C. for amendment of the plaint. The Ld. City Civil Judge, IX Bench had allowed the amendment application.

Being aggrieved with the said order, the Respondent being the defendant of the suit had preferred a Civil Revisional application being C.O. No. 2787 of 2017 (Shaikh Sahajan Hossain –vs- Mohd. Shahnawaz Khan & Anr.). The Hon'ble Single Judge disposed of the Revisional Application on 29.08.2018 by passing the following orders:-

“In the present case, however, the amended relief of eviction is based on an entirely different cause of action than the original plaint, inasmuch as the original plaint sought for a declaration and permanent injunction on an entitlement to re-enter the suit premises on refund of an amount of premium, whereas the amendment envisages recovery of possession on the premise of a notice dated January 24, 2015. The latter cause of action is not only foreign to the original

one, but takes the vortex of controversy entirely beyond the scope of the original claim.

As such, Order II Rule 2 of the Code is not applicable in terms and is a misnomer in the present case, since the causes of action for the original reliefs claimed and the relief omitted are different and contra-distinct.

Moreover, the relief claimed in the original plaint is vexatious and mala fide insofar as the same is moonshine and ex facie not supported by the chain of events leading to the cause of action, resulting in non-disclosure of cause of action, which attracts the principle laid down in T. Arivandandam & Anr.(supra), justifying even nipping such vexatious suit in the bud by rejection of the plaint. The said fundamental defect in the suit ought not to be permitted to be rectified by permitting a cardinal transposition of the cause of action, thereby allowing novation of the cause of action and the plinth of the suit itself.

Even the other judgment of the Supreme Court cited by the petitioner, being that of Bharat Karsondas Thakkar (supra), is squarely applicable to the present case, since here, like the said reported judgment, the proposed amendment would completely change the nature and character of the suit.

In such view of the matter, the amendment of plaint sought by the plaintiffs/opposite parties, as allowed by the trial court, cannot stand the scrutiny of judicial review under Article 227 of the Constitution of India, since the same would alter the basic framework, nature and character of the suit and substitute an entirely new cause of action for the bundle of facts leading to the suit, as framed, in the original plaint.

Accordingly, C.O. No.2787 of 2017 is allowed on contest, thereby setting aside the impugned order, bearing Order No.28 dated June 29, 2017 passed by the Judge, Ninth Bench, City Civil Court at Calcutta, District: Calcutta in Title Suit No.180 of 2015, and dismissing the application filed by the plaintiffs/opposite parties for amendment of the plaint in the said suit.”

After the dismissal of the application under order VI Rule 17 of C.P.C; Respondent (defendant in the suit) filed an applicasiton under order VII, Rule 11 of C.P.C. praying for rejection of plaint.

While deciding the application filed by the defendant before the Learned Trial Court under Order 7 Rule 11, the Learned Trial Court found that the prayer portion in the plaint of the plaintiff in respect of their entitlement to get back the suit property on making a

refund of premium of Sub Lease to the defendants and also prayed for injunction and totally vexatious and having no sufficient cause of action to file the said suit.

The Hon'ble Single Judge while disposing of the civil revisional application held that the relief claimed in the plaint is vexatious and malafide in so far as the same is moonshine and *ex facie* not supported by the chain of events leading to the cause of action, resulting in non disclosures of cause of action.

The order passed by the Hon'ble Single Judge in C.O. No.2787 of 2017 dated 24th August, 2015 has reached its finality as the appellant has not challenged the said order before the Appellate Court.

The Learned Trial Court has taken into consideration the order passed by the Hon'ble Single Judge, allowed the application filed by the defendant under Order 7 Rule 11 C.P.C. and as such this Court has not found any illegality in the judgement and decree dt.15.2.2019 passed in T.S. No.180 of 2015. The appeal has no merit and the same cannot be admitted.

FAT 399 of 2019 with IA No. CAN 1 of 2020 (Old No.CAN 1979 of 2020) are thus dismissed.

All parties to act in terms of a copy of the order downloaded from the official website of this Court.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Krishna Rao, J.)

(Subrata Talukdar, J.)