

21.9.2022
42
Ct. no. 652
sb

C.O. 2217 of 2021

Smt. Anushila Chakraborty
Vs.
Shri Lakshman Chandra Saha

Mr. Siva Prasad Ghosh
Ms. Debjani Ghosh Roy (Deb) ...for the petitioner

Mr. Pradyut Kundu
Mr. Shibaji Kumar Das
Ms. Rupsa Sreemani ...for the opposite party

This is an application under Article 227 of the Constitution of India, which has arisen against order no. 87 dated 9.11.2021 passed by the learned Civil Judge (Junior Division), First court, Barrackpore in title suit no. 134 of 2009.

By the impugned order, the learned trial court was pleased to reject plaintiff/landlord's application under Order 6 Rule 17 of the code of Civil Procedure on the ground that no amendment should be allowed which amounts to or results in defeating a legal right accruing to the opposite party on account of lapse of time with further observation that the proposed amendment introduced an entirely different new case which sought to displace the defendant completely from admissions made by the plaintiff in plaint.

The petitioner filed suit for eviction and recovery of khas possession against the opposite party in respect of

one shop room being title suit no. 134 of 2009 in the court of learned Civil Judge (Junior Division), First court, Barrackpore on the ground of default reasonable requirement and nuisance. The opposite party contested the suit by filing written statement and the opposite party contended that there was a tenancy agreement on 27.6.2003 and by dint of agreement monthly rent was fixed at Rs. 225/- with effect from July, 2003. During peremptory hearing, PW 1 gave evidence in the said suit and said agreement dated 27.6.2003 has been marked as Exhibit 5. It reveals from terms of agreement that the arrears of rent commencing from October 1997 to June 2003 amounting to Rs. 8625/- is to be paid by the defendant to the plaintiff and in the said agreement it has also been recited that the rent will be enhanced @ 10% after every three years and it has also been recited therein that the opposite party will pay municipal tax. The opposite party also filed affidavit in chief and during cross examination as DW 1 he admitted that Rs. 8625/- is due when the Exhibit 5 was executed and he also agreed that there is a condition that after every three years, the rent for the tenancy would be increased by 10% but he could not tender the rent to the tune of Rs. 247.50/- as the landlord refused to receive the rent since 1.7.2006 to 1.7.2009 and DW 1 also admitted that he had not deposited rent before court below and has not

paid proportionate share of municipal tax in respect of suit holding to the landlord.

In the above backdrop when the evidence of defendant was continuing, the petitioner/landlord filed an application for amendment of plaint for incorporation of the terms and conditions of the agreement for tenancy which has been admitted by the defendant during cross examination and that in terms of agreement defendant failed to deposit rent and as such he is a defaulter and not entitled to get protection. Said application for amendment came up for hearing before the learned court below and learned court below by the impugned order dated 9.11.2021 was pleased to reject the prayer for amendment with certain observations.

Being aggrieved by the observations made by the trial court in the impugned order, the petitioner has brought on record the present revisional application before this court. On perusal of the schedule of amendment, it appears that by way of amendment plaintiff/landlord wanted to incorporate the terms and conditions of the tenancy agreement which however is not in dispute in the present context. The tenancy agreement has already been marked as Exhibit 5 and defendant as DW 1 has also not denied or disputed the terms and conditions of the agreement which plaintiff/landlord wants to incorporate by way of an amendment. However, the trial court while rejecting

prayer for amendment observed that the proposed amendment if allowed will alter and change the nature and character of the suit and that no amendment should be allowed which amounts to or results in defeating a legal right accrued to the opposite party on account of lapse of time and that the amendment if allowed, will introduce an entirely different new case and to displace the defendant completely from the admission made by the plaintiff in plaint, which are completely uncalled for as question of changing nature and character of suit or withdrawal of admission does not involve with the prayer for amendment because as per plaint all along plaintiff's suit is for recovery of khas possession inter alia on the ground of default in payment of rent since August 2006 (paragraph 4 of the plaint). Therefore ultimate conclusion of the trial court in rejecting the prayer for amendment is not wrong in view of proviso to order VI Rule 17 but her findings to reach such conclusion is perverse. Actually the tenancy agreement was all along with the parties and both the parties were aware of the tenancy agreement then the amended provision of order VI rule 17 of Civil Procedure code shall apply that no application for amendment shall be allowed after the trial has commenced unless the court comes to the conclusion that in spite of due diligence the party could not raise the matter before the commencement of trial.

Having considered facts and circumstances of the case, though ultimate finding of the learned trial court in rejecting the prayer for amendment under Order VI Rule 17 remains uninterfered but this court is not agreeable with the reasoning given for rejection of the amendment of plaint.

In view of above, the application being C.O. 2217 of 2021 is disposed of.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)