

17.11.2022
8
Ct. no. 652
sb

C.O. 4176 of 2018

Baidyanath Sadhukhan
Vs.
Panchanan Sadhukhan (Dead) represented by
Pravabati Sadhukhan & Ors.

Mr. R.N. Dutta
Mr. Sibasis Ghosh
Mr. Koushik Bhattacharjee ...for the petitioner

Md. Jounush Mondal ...for the opposite party
nos. 1(b), 1(c), 1(d), 1 (e)

Being aggrieved and dissatisfied with the order dated 19.9.2018 passed by the learned Civil Judge, Junior Division, 1st Court, Barasat in Title suit no. 142 of 1999, the present application has been preferred under Article 227 of the Constitution of India.

By the impugned order, the learned court was pleased to reject the plaintiff's prayer for amendment with the following observations:-

"It reveals from the case record that earlier the predecessor of this court has rejected the amendment sought for by the plaintiff dt. 28.09.15. The said order has not been challenged by the plaintiff till date. this court does not find any reason to allow the amendment prayer of the plaintiff when it has already been rejected. Accordingly the prayer for amendment cannot be entertained and as such the same is rejected."

It is submitted that this is a suit for declaration and permanent injunction and the suit has been posted for ex parte hearing and two witnesses have already been

examined and at that stage, the plaintiff filed the aforesaid prayer for amendment of the plaint. Learned court rejected the said amendment prayer solely on the ground that on earlier occasion, the plaintiff's prayer for amendment was rejected vide order dated 28.9.2015.

It is submitted on behalf of the petitioner that the schedule of amendment made in the said amendment application in respect of which order dated 28.9.2015 was passed, are not the same schedule of amendment in respect of the present amendment prayer in connection which, the order impugned was passed. Accordingly, it is submitted that the trial court was not justified in rejecting the aforesaid application for amendment solely on the ground that earlier plaintiff's amendment petition was rejected.

On perusal of the schedule of amendment as sought for in connection with the earlier order dated 28.9.2015 appears to be not exactly the same in connection with schedule of amendment, in respect of which, impugned order has been passed.

In view of the above, C.O. 4176 of 2018 is disposed of with a direction upon the trial court to rehear the plaintiff's prayer for amendment afresh and to pass a reasoned order without being influenced by any of the observations made by this court, as expeditiously as possible preferably within a period of three months from the date of the communication of the order.

Accordingly, C.O. 4176 of 2018 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.)