

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 101 of 2023

Biswarup Bhattacharjee
Vs.
Smt. Kuntal Roy Chowdhury

Mr. Sundar Gopal Bhattacharyya
... For the petitioner

Ms. Malabika Roy Dey
... For the opposite party

Affidavit of service filed in Court today is taken on record.

This application has been filed assailing the order dated 6th December, 2022 whereby the learned Civil Judge (Junior Division), 5th Court, Alipore, South 24-Parganas, refused an application for amendment on the ground of filing the same at the belated stage.

Learned advocate appearing on behalf of the petitioner submitted that the petitioner/defendant is a tenant in respect of Premises No.119, Brahma Samaj Road, being holding no.77/67, within KMC Ward No.130, in respect of four rooms in the said premises. It is further submitted on behalf of the petitioner/defendant that the opposite party/plaintiff filed a Title Suit, being No.77 of 2007, for eviction of the petitioner/defendant from the two rooms of the building and that suit was dismissed on contest on 25th June, 2015. Subsequently, the opposite party/plaintiff filed one Ejectment Suit, being No.18 of

2007, which is pending before the learned Civil Judge (Junior Division) 5th Court, Alipore, South 24-Parganas, and in that suit the petitioner/defendant filed one application for amendment with intent to incorporate the factum of dismissal of the earlier Title Suit, being No.77 of 2007, which was dismissed on 25th June, 2015. Learned Judge did not allow the amendment application solely on the ground that it was filed at the belated stage in spite of having knowledge of the fact of the order of dismissal at the time of filing of Ejectment Suit No.18 of 2007 which is pending before the learned Civil Judge (Junior Division) 5th Court, Alipore, South 24-Parganas.

Considering all the facts and circumstances , I find that incorporation of the fact of dismissal of the earlier suit which was filed for eviction of trespasser is required for proper adjudication of the suit involving the point of law as well as fact.

Considering all the facts and circumstances, I do not find any reason to disallow the prayer for amendment which is necessary for proper adjudication of the Ejectment Suit, being No.18 of 2007, pending before the learned Civil Judge (Junior Division) 5th Court, Alipore, South 24-Parganas, causing any prejudice to any of the parties.

Thus, the impugned order dated 6th December, 2022 stands set aside. The prayer for amendment is allowed subject to payment of cost of Rs.5,000/- to be paid

by the petitioner/defendant to the Calcutta High Court Legal Services Committee within seven days from date.

The learned Civil Judge (Junior Division) 5th Court, Alipore, South 24-Parganas, is requested to dispose of the Ejectment Suit No.18 of 2007, after giving an opportunity of hearing to both the parties to the suit, preferably within three months from the date of receipt of this order.

The petitioner/defendant is directed to file amended written statement within seven days from the date of receipt of the order by the learned Trial Court.

With the aforesaid observation, the revisional application, being CO 101 of 2023, stands disposed of.

Let a copy of this order be communicated to the learned Trial Court forthwith.

Learned advocates appearing on behalf of the parties also are at liberty to bring this order to the notice of the learned Civil Judge (Junior Division) 5th Court, Alipore, South 24-Parganas.

All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court without insisting upon production of a certified copy thereof.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)