

13.01.2023
Item No.1
Ct. No.7
CHC
(disposed of)

**C.O. 247 of 2022
IA NO: CAN/1/2022
CAN/2/2023**

**Gautam Kumar Pincha
Vs.
Smt. Shanti Debi Agarwal & ors.**

Mr. Gautam Kumar Pincha
...petitioner-in-person

Mr. V. N. Dwivedi,
Mr. Jayanti Char
...for the opposite party no.1

Ms. Papiya Kundu
...for the opposite party no.2

Subject-matter of challenge in this case is against order dated 24th December, 2021, passed by learned Civil Judge (Senior Division), 2nd Court, Barasat, North 24 Parganas, allowing amendment, proposed by the plaintiff.

Admittedly, this is a suit for specific performance of contract, wherein the defendant no.2 being petitioner filed his written statement disputing with the claim proposed in the plaint stating reasons thereon.

There is an application for substitution being C.A.N.1 of 2022. The present substitution application is consequent upon the death of the defendant no.3. The substitution application is within the time as provided under the Act. The substitution as such

stands disposed of allowing substitution. Let the name of legal heirs left behind by defendant no.3, as disclosed in the relevant averment of the CAN application, be substituted.

Department to make necessary correction in the cause-title of the revisional application, taking advantage of this order. Simultaneous with this exercise proposing substitution, appropriate application may also be filed before the court below for the proposed substitution.

Mr. Gautam Kumar Pincha, petitioner appearing in person, disputes with the impugned order that the objection raised in the written objection filed against the proposed amendment could not be appropriately gone into by the court below, while allowing the proposed amendment.

The attention of court is drawn to the paragraphs 2, 3 and 9 of the plaint in support of the objection disclosed in the written objection, filed against the proposed amendment.

Taking recourse to the paragraphs 2, 3 and 9 of the plaint, coupled with objection disclosed in the written objection of the amendment application, it is submitted by the petitioner appearing in person that there has been erroneous decision reached by the

court below without addressing the points disclosed in the objection.

Mr. V. N. Dwivedi, learned advocate appearing for the opposite party no.1 replies that the court below has considered all the aspects, bearing in mind the pleadings available before the court, submitted by the parties to this case.

It is thus submitted by the opposite party no.1 that proposed amendment is consequential to the prayer already disclosed in the plaint, and it would not cause any change in the nature and character of the suit.

Upon perusal of the impugned order, it appears that there has been no appropriate consideration of the objection disclosed in the objection petition read with the averments taken in the plaint, in particular paragraphs 2, 3 and 9.

A fresh decision, giving a hearing afresh to both the parties, is felt necessary.

The revisional application stands disposed of upon setting aside the impugned order directing the court below to hear out the amendment application afresh taking into account the objection filed by the petitioner read with averments disclosed in paragraphs 2, 3 and 9 of the plaint.

Such exercise, has to be taken by the court below within eight (08) weeks from the date of

communication of this order to the court below. The opposite parties must be given appropriate opportunity of hearing, permitting them to produce incidental documents, if necessary, supportive of the prayer for the proposed amendment, while extending hearing afresh.

Interim order stands vacated.

The application being C.A.N.2 of 2023 stands disposed of.

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

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)