

Item No. 11
26.07.2023
Court. No. 19
GB

C.O. 672 of 2022

Chandana Rakshit (Mitra)
Vs.
Asish Rakshit & Anr.

Mr. Prantick Ghosh

...for the Petitioner.

Despite service on two earlier occasions, none appears on behalf of the opposite parties. In compliance of the order dated July 11, 2023 another service was effected, yet none appears on behalf of the opposite parties.

The petitioner is aggrieved by an order dated March 25, 2020 passed by the learned Civil Judge (Junior Division), 1st Court at Barasat in Title Suit No.559 of 2014. By the order impugned, the learned court rejected an application for amendment of the plaint filed under Order 6, Rule 17 of the Code of Civil Procedure. The learned court rejected the application for amendment on the ground that the same was pending since long and to ensure a speedy trial, the amendment could not be allowed. It is further stated that the amendment is not very formal in nature. The amendment may change the nature and character of the suit.

It appears that the proposed amendment seeks to incorporate proper valuation, a prayer for mesne profit, proper calculation of the mesne profit and a detailed and complete description of the suit property.

It appears to the Court that the amendment shall neither change the nature and character of the suit property nor would the defendants be prejudiced if such amendment

is allowed. Moreover, merits of the amendment sought to be incorporated, are not to be gone into at the stage of considering the application.

In ***Rajesh Kumar Aggarwal & Ors. vs. K.K Modi & Ors.*** reported in ***AIR 2006 SC 1647***, the Apex Court held that the Court was not to go into the merits. The relevant portion is quoted below:-

"While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment."

It is well-settled that amendment should be liberally allowed, unless the same amounts to withdrawal of any admission made in the plaint or contrary pleas are sought to be introduced.

In the decision of ***Life Insurance Corporation of India vs Sanjeev Builders Private Limited & Anr. decided in Civil Appeal No. 5909 of 2022***, the Hon'ble Apex Court laid down the principles governing amendments in paragraph 70 of the decision. The relevant portion is quoted below:-

(ii) All amendments are to be allowed which are necessary for determining of the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed:-

- (i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and
- (ii) to avoid multiplicity of proceedings, provided
 - (a) the amendment does not result in injustice to the other side,
 - (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and
 - (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

- (i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,
- (ii) the amendment changes the nature of the suit,
- (iii) the prayer for amendment is malafide, or
- (iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.”

Finally, an amendment should be allowed for adjudication of the real controversy between the parties.

In this case, the application for amendment was filed long before the issues were framed. Hence, the revisional application is allowed. The order impugned is set aside. The petitioner is granted liberty to file the amended plaint, within four weeks from date. The learned court below shall accept the amended plaint. The defendant shall be entitled to file an additional written statement within three weeks from filing of the amended plaint. The suit shall proceed in accordance with law.

This Court has not gone into the controversy between the parties and this order shall not be construed as an observation on the merits of the suit.

Accordingly, the revisional application is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)