

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

CO 748 of 2023

Chandeshwar Singh

vs.

Shree Shree Iswar Satyanarayan Jee and others

For the petitioner : Mr. Kumarjyoti Tewari
Mr. Amrit Sinha
Mr. Aniruddha Tewari

For the opposite parties : Mr. Sakya Sen,
Mr. Animesh Paul,
Mr. Ramij Munsi
Ms. Haardikaa Rajdev

Hearing concluded on: 28.06.2023

Judgment on: 04.08.2023

Shampa Sarkar, J.:-

1. This revisional application has been filed challenging the order dated January 24, 2023, passed by the learned Civil Judge (Junior Division), 3rd Court at Howrah, in Title Suit No.308 of 2004.

2. By the order impugned, the learned court allowed an application for amendment of the plaint.

3. The defendant challenged the said order on the following grounds:-

(a) The amendment was not necessary for proper adjudication of the dispute between the parties,

(b) The amendment was inordinately delayed. The same has been filed after almost 18 years from the date of filing of the suit.

(c) The learned court below mechanically allowed the amendment without giving any reasons.

(d) The amendment was barred by law.

(e) The proposed amendment was for inclusion of an additional ground for eviction, namely, reasonable requirement for building and re-building over the suit property. This was a new cause of action.

(f) Such new cause of action would substantially alter the nature and character of the suit. The suit was filed for eviction on the ground of subletting, default and damage to the property. By incorporating the ground of reasonable requirement for building and rebuilding, the plaintiff sought to introduce a time-barred claim.

4. Mr. Tewari, learned advocate for the petitioner/defendant, submitted that as the tenancy was terminated with effect from October 31, 2002, the amendment ought to have been brought within 12 years from the termination of the tenancy. As per the provisions of Article 67 of the Limitation Act, 1963, the additional ground was barred. According to Mr. Tewari, as a fresh suit for eviction could not have been brought, the amendment should not have been allowed. In this case, the new ground for eviction was brought after 18 years and as such a time barred pleading, could not be brought in by way of an amendment.

5. Learned advocate relied on the decision of **Life Insurance Corporation of India vs Sanjeev Builders Private Limited and Anr.** reported in **2022 SCC Online SC 1128**. According to Mr. Tewari, Their

Lordships were of the opinion that although amendments should be liberally allowed, a time-barred claim could not be introduced by way of an amendment. The relevant paragraph which was cited by Mr. Tewari, is quoted below:-

“70. (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”

6. Further reliance was also placed on the decision of ***Revajeetu Builders and Developers vs. Narayanaswamy and sons and others*** reported in ***(2009) 10 SCC 84*** in support of the contention that amendment to a plaint could not be allowed, if the cause of action was time barred. The relevant paragraph which was cited by Mr. Tewari is quoted below:-

“Factors to be taken into consideration while dealing with applications for amendments

63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;
- (2) whether the application for amendment is bona fide or mala fide;
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
- (6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

7. Mr. Sakya Sen, learned advocate for the opposite parties, submitted that the amendment did not change the nature and character of the suit. In the notice to quit, the ground of re- building had been mentioned, but inadvertently the same was not incorporated in the plaint. However, during the progress of the suit, the plaintiffs found the need to build a temple. The existing temple was not adequate. No other suitable place, was available for construction, other than the premises in which the suit property was situated. The trustees of the debuttar property invited quotations from proposed architects. TEMPLE ARCHITECTS INDIA PVT. LTD, prepared a plan for the proposed temple at 19, Mukhram Kanoria Road, Howrah-711101. The plan included a construction over the building in which the suit property was situated. An amount of Rs.12 crores was quoted. The additional ground for eviction was thus, essentially required to be incorporated in the said plaint, in view of the subsequent progress in the proposal for construction of the temple by engagement of a reputed company for the purpose of preparation of the building plan. The amendment was necessary for complete adjudication of the dispute, in order to avoid multiplicity of proceedings and for the ends of justice.

8. Learned Advocate submitted that the proposed amendment was not barred by limitation. The cause of action to evict arose with the determination of tenancy with effect from October 31, 2002. The plaintiff had already instituted a suit for eviction on certain grounds. An additional ground would neither change the nature and character of the suit, nor would the same amount to introduction of a new case. Steps had already been taken by the plaintiff for eviction of the tenant. Additional grounds

could be pleaded at any stage in the suit. The final relief was one for eviction. The grounds individually, did not need to satisfy the laws of limitation. The ground of reasonable requirement for building and re-building arose subsequently, when the trustees consulted a reputed building company for the purpose of building a temple. Incorporation of a new ground, would not amount to withdrawal of any admission made in the plaint and also, would not cause irreparable loss and injury to the tenant by extinguishing any right which had accrued in favour of the tenant during the pendency of the suit.

9. It was further submitted that delay would not be a ground as trial had not commenced and hence the proposed amendment would not be hit by the proviso to Order VI Rule 17 of the Code of Civil Procedure. Learned counsel further submitted that the merits of the amendment should not be looked into at this stage and the point of limitation may be urged at the trial, as a separate issue.

10. On a plain reading of the plaint, it appears to the Court that the suit property is situated on a debuttar property. The building is a religious endowment. The suit was filed by the deities, through the trustees. The property is situated at 19 and 19C, Mukhram Kanoria Road. The plaintiff Nos. 1 to 10 are the deities. Raja Shew Bux Bagla was the founder of the trust and the original sebaite. Thereafter, by succession, the opposite party Nos. 11 to 14 became the trustees and sebaits of all the trust properties, including the suit property and claimed through their ancestors. The said trustees, on behalf of the deities, filed the suit for eviction and recovery of possession in respect of one room and verandah situated at a portion of

premises No.19C and also in the eastern portion of the ground floor of premises No.19, Mukhram Kanoria Road along with a verandah in the southern portion.

11. The plaint case was that the defendant was a manager of one Janhit Dairy Farm. He offered to take the tenancy of the aforementioned premises, on the following terms and conditions:-

- a. The access to the said premises would only be through the room being portion of holding No. 19C Mukhram Kanoria Road and the door thereof opening on Mukhram Kanoria Road.
- b. There would be no access to the said premises from the main gate or the verandah, situated in the south of premises No. 19, Mukhram Kanoria Road.
- c. The tenancy of the premises would be according to english calendar month, commencing from August 1978 at a rent of Rs. 200/- per month payable on or before 7th day of the succeeding month.
- d. The said defendant/opposite party would not commit any act which could cause annoyance or disturbance to the landlords.
- e. The said defendant would pay the municipal rates and taxes, including increased rates and taxes and also electricity charges.
- f. The premises would be used only for storage of wholesale ghee and butter, which would be brought securely packed in tins.
- g. No packing of ghee would be done inside the said premises. The entire process of selling and storing of ghee and butter would not be inflammable and nothing inflammable would be done at the premises.
- h. If at any point of time it was found that anything inflammable was stored or was taking place in the premises, the landlords/ plaintiffs, would be entitled to terminate the said tenancy.

12. It was further averred in the plaint that the dairy farm closed and the suit premises was used for all wrongful activities in breach of the tenancy agreement. The premises were also let out to third parties. Obnoxious smell used to emit from the premises. The premises was used for activities, other than the one for which the tenancy was granted. The rent was not paid regularly and the tenant became a defaulter. By a notice

dated September 11, 2002, the landlord terminated the tenancy with effect from October 31, 2002. The factors giving rise to the suit, as per the plaint, were as follows:-

- (a) The defendant had sublet, assigned and/or otherwise parted with possession of the whole or part of the tenanted premises without the consent in writing of the landlords/plaintiffs.
- (b) The defendant has defaulted in payment of the rent since April 2002. The default in payment of rent was for more than three months within a period of 12 months.
- (c) The defendant's acts were contrary to the provisions of Clauses (m), (o) and (p) of Section 108 of the Transfer of Property Act, 1882;
- (d) The defendant was guilty of nuisance causing annoyance, inter alia, to the landlords.
- (e) The defendant had changed the nature and character of the portion occupied by him.
- (f) The defendant illegally constructed a mezzanine floor in the said premises.

13. It had been pleaded that the cause of action for the suit arose on and from April 1, 2002, continued till October 31, 2002 thereafter, on November 1, 2003 and was continuing. The prayers in the plaint were for a decree of eviction of the said tenant/defendant, payment of balance arrear rent, mesne profit, payment of outstanding municipal tax and interest etc.

14. Admittedly, in the notice of termination of tenancy, the date of termination was mentioned as October 31, 2002. Title Suit No.308 of 2004 was filed. The suit continued, but trial had not commenced. By way of an amendment, the plaintiffs sought to incorporate the additional ground of reasonable requirement for the purpose of building and re-building. The proviso to Order VI Rule 17 of the Code of Civil Procedure would not stand in the way of such amendment as trial had not commenced. Subsequent events had taken place. During the pendency of

the suit, the trustees had decided to invite quotations from reputed builders to prepare a plan for a temple on the debutter property, which included the suit premises. Even if the notice to quit mentioned the ground of building and re-building, the same was initially not inserted. During the long pendency of the suit, plaintiffs invited quotations from a reputed company. Such company approached the plaintiffs with the proposal and quotation. A decision was taken for construction of the temple, by the trustees, allegedly, for the benefit of the debuttar estate. Such subsequent event was sought to be incorporated in the plaint by way of an amendment and a further ground for eviction arising from such events was sought to be included.

15. The amendment does not change the nature and character of the suit, nor does it take away any accrued right of the defendant. There was neither withdrawal of admission nor introduction of contradictory pleas. The cause of action was for eviction of the tenant and recovery of khas possession. The reliefs claimed were also not altered. The suit for eviction had already been filed within the period of limitation. The contention of the defendant/petitioner that the additional ground was barred by limitation is not accepted. Limitation would not run as the suit for eviction was pending. Limitation was arrested with the filing of the suit. In the decision cited by Mr. Tewari in **Life Insurance Corporation of India (Supra)** it was held that a claim which was ex-facie time barred, could not be allowed. This is not the situation in the case in hand.

16. Mr. Tewari's case was that the additional ground should have been introduced within twelve years from the date of termination of tenancy. The question of applicability of Article 67 of the Limitation Act would not arise in a pending suit. The suit for eviction had already been filed within time and introduction of an additional ground of eviction by way of an amendment, would not amount to introducing a new claim. The amendment would also avoid multiplicity of proceeding which is one of the principal reasons why such amendment should be allowed.

17. There are catena of decisions of different High Courts, wherein, it had been held that adding a new ground for eviction by an amendment was permissible. Such amendment would not amount to either changing the nature and character of the suit or alteration in the cause of action or introduction of a new cause of action.

18. In the case of *Dwarka Prosad Mahawar v. Gopal Das Mahwar* reported in **80 CWN 269**, it was held that in order to avoid multiplicity of suits, subsequent events may be allowed to be pleaded during the pendency of a proceeding, by way of amendment of a plaint. A new ground for eviction under Section 13(1)(f) of The West Bengal Premises Tenancy Act, 1956, was allowed to be incorporated by an amendment.

19. In *Tara Properties Pvt. Ltd v. Allied resins & Chemicals Ltd.* reported in **(1989) 1CHN 160**, a Division Bench of this Court observed in Paragraphs 11, 12 and 13 as follows:-

"11. Now we come to the main question of amendment of the plaint relating to subletting which was disallowed by the learned Trial, Judge on the ground that it was a totally new cause of action and a ground of ejection which was not originally pleaded, and that its introduction would change the structure of the suit. This particular point has now

been well settled in three decisions of this Court, namely, (a) in the case of *Dwarka Prosad Mahawar v. Gopal Das Mahawar & Ors.* reported in 80 CWN 269: 1976 CHN 453; (b) in the case of *Jitendra Nath Das v. Dr. Kalyan Kumar Banerjee & Anr.* reported in AIR 1977 Cal 49 which is a Division Bench decision confirming the decision reported in 80 CWN 269; and (c) in the case of *Pronati Mitra v. Sachindra Nath Chatterjee* reported in AIR 1977 Cal 409. In *Dwarka Prosad Mahawar's* case (supra) the plaintiff instituted a suit for the eviction of a tenant on the ground of default in the payment of rent under West Bengal Premises Tenancy Act, 1956 and it was alleged that during the pendency of the suit the tenant defendant had made certain unauthorised constructions in the premises and the plaintiff made an application for amendment of the plaint by adding another ground for eviction, viz., the construction of the unauthorised structures. This amendment was allowed by the Trial Court and High Court held that the amendment was rightly allowed. In the case of *Jitendra Nath Das* (supra) the landlord applied for the amendment of the plaint by the introduction of his reasonable requirement of the suit premises as an additional ground of relief. The question arose before the High Court whether the amendment allowed by the court below was permissible. The Division Bench held that the suit is one for ejectment of a tenant and the amendment, if allowed, will not change the nature and the character of the suit, inasmuch as it will nevertheless remain the suit for eviction of a tenant. It was further held that the cause of action is the determination of the tenancy by a notice to quit. Their Lordships further observed: "We are concerned with the question whether the application for amendment should be allowed or not. Whether the court will decide in favour of the plaintiff or not in so far as the new ground is concerned is a question which is to be considered at the hearing of the suit and not at this stage." In the case of Pronati Mitra (supra) it was held in connection with the amendment of plaint under the W.B. Premises Tenancy Act that if any ground is added subsequently that cannot change the cause of action or the nature of the suit. The suit remains one for eviction as it was at the date of commencement of the suit.

12. Whether the suit is under the Transfer of Property Act or the West Bengal Premises Tenancy Act, the principle discussed above is equally applicable in all the cases so far as the amendment of plaint is concerned and where ejectment of the defendant is the ultimate object. Such amendment, if allowed, in no way changes the nature of suit or interferes with the cause of action which remains unaltered. This principle has further been elucidated in the case of A.R. Dasgupta v. B.N. Biswas reported in 54 CWN 536, where it was held that the amendment should be allowed since it does not alter the nature of the case at all which remained a suit for ejectment nor does it alter the cause of action which was and is the termination of the tenancy. In another decision reported in (1975) 2 CLJ 396 (*Nil Kantha Roy v. D.N. Mullick*) it was held that seeking additional ground in

support of ejectment does not alter the nature of the suit. In *Zainab Bai v. Narayug Chitrapat Co. Ltd.* the Bombay High Court held that where a suit for the ejectment of tenant is filed on certain ground, subsequent addition of fresh ground in the plaint does not change the nature of the suit AIR 1969 Bom 194. A Full Bench of the Delhi High Court also took a similar view in the case of *Sm. Abnash Kaur v. Dr. Avinash Nayyar & Ors.* AIR 1975 Delhi 46.

13. In the light of aforesaid discussion in our view the amendment prayed by the appellant on the ground of subletting as contained in para 9C of the amendment petition in no way changes the character or nature of the ejectment suit nor makes out any new cause of action. Even if the subletting was done before the filing of ejectment suit even then the respondent will suffer no prejudice at all if such an amendment is allowed because merely allowing the amendment does not give any relief to the appellant but the appellant will have to prove its case of ejectment before the trial Court. The Court of first instance wrongly disallowed the amendment on the ground of subletting.”

20. In the case of ***Sri. A.S Nagi (defendant) v. SM. Pronati Mazumder (plaintiff)*** reported in ***(1992) 1 CLT 182***, a Division Bench held that a new ground for eviction alleging illegal transfer of the tenanted property, not originally taken, could be taken by amending the plaint.

21. Hence, as has been discussed in the abovementioned decisions, introduction of a new ground for eviction by way of an amendment would not give rise to a new cause of action or a new claim. Thus, the question of introduction of a time-barred claim would not arise.

22. Here, the suit was filed well within the period of limitation, i.e., within twelve years from the effective date of determination of the tenancy. The subsequent amendment was not a new cause of action and hence incorporation of an additional ground of attack would not be guided by Article 67 of the Limitation Act. The learned court below rightly allowed the amendment as the question of introduction of a time barred claim did not arise. The new ground for eviction, in a pending suit had been

introduced which the petitioner can controvert by filing an additional written statement. The merits of the amendment need not be looked into at this stage and shall be decided at the trial. The Hon'ble Apex Court in the case of ***Rajesh Kumar Aggarwal & Ors. vs. K.K Modi & Ors.*** reported in ***AIR 2006 SC 1647***, 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."

Although, this Court is of the view that the learned Court below had not supplied proper reasons, but ultimate decision of the learned Court, to allow the amendment, is correct. The learned court however erred in not allowing the defendant to file an additional written statement. .

23. Under such circumstances, the revisional application is disposed of. The amended plaint will be filed within two weeks from date if not already filed and the amended written statement will be filed within four weeks from date or from receipt of the amended plaint, whichever is later.

24. There will be no order as to costs.

25. Parties are directed to act on the server copy of this judgment.

(Shampa Sarkar, J.)