

21.12.2023
Court No. 19
Item no.32
CP

C.O. No. 869 of 2023

Smt. Suman Tosniwal & Ors.

Vs.

Sri Chandrama Prasad Verma & Ors.

Mr. Debdut Mukherjee

Mr. Uttam Kumar Bhattacharyya

.....for the petitioners.

The revisional application arises out of an order dated December 15, 2022, passed by the learned Civil Judge (Senior Division), 2nd Court, Howrah in Title Suit No.16397 of 2014.

It is submitted that by a belated application for amendment, the plaintiff wanted to incorporate certain facts which were irrelevant and wholly incorrect.

The petitioners/defendants submit that although the learned court found that the amendment was at a belated stage, the amendment was allowed. This court finds that the specific observation of the court was that the facts sought to be incorporated by way of the amendment, were essential for adjudication of the dispute. The relevance of the contents of the schedule of amendment, was noted by the court. Thus, the court held that the amendment deserved to be allowed.

The learned court directed that compensation upon payment of cost of Rs.5000/- would be justified in view of the delay.

Mr. Mukherjee, learned advocate appearing on behalf of the defendants, submits that this is the second amendment to the original plaint. That the plaintiff was trying to delay the suit and also delay the adjudication of the counter claim. That the facts sought to be incorporated were within the knowledge of the plaintiff, but the plaintiff chose not to incorporate the same, when the suit was filed. That the learned court ought to have recorded its satisfaction that in spite of due diligence, the facts sought to be incorporated in the plaint, were not within the knowledge of the plaintiff. He submits that the trial had commenced and the proviso to Order 6 Rule 17 of the Code of Civil Procedure, precluded the court from allowing such amendment.

It is further submitted that the plaintiff is continuing parallel proceedings before the consumer forum. A similar application, seeking to amend the complaint petition, was rejected by the consumer forum.

Having heard the learned advocate for the petitioners, this court finds that the schedule of amendment relates to the subject matter in issue in the suit. Three defendants were sought to be added.

Such defendants were the sons of Maya Devi, who was the erstwhile owner of the property in question. May Devi had entered into a development agreement with Harish Shaw, son of late Kishore Shaw for construction of a G+4 storeyed building at the Premises No. 105/15/1, Girish Ghosh Road, Bally, Howrah. A power of attorney was executed in favour of Harish Shaw. As per the development agreement, the developer was entitled to 60% area out of the total constructed area and the owner was entitled to 40% of the area, out of the total constructed area. Other facts as to when the petitioner came to know that Harish Shaw had been engaged to construct the building when the plaintiff entered into an oral agreement with the developer and what were the transactions between the developer and the plaintiff, were sought to be incorporated.

The petitioner no. 2/defendant, is the partnership firm which runs the business of development. Harish Shaw was one of the partners. The petitioner no. 1 is also a partner in the said firm. Thus, the suit revolves around a breach of contract between the plaintiff and the petitioners. Harish Shaw was one of the partners of the petitioner/firm. The plaintiff wanted to introduce such facts relating to the transactions with one of the partners of the petitioner no. 2, in respect of the self-same property.

The plaintiff now seeks specific performance of the agreement against the defendants/petitioners and the earlier interactions and transactions between the owner, one of the partners and the plaintiff were sought to be incorporated.

Under such circumstances, this court is of the view that the facts sought to be incorporated are not alien to the suit. They are not withdrawal of any admissions. The learned court has exercised its jurisdiction and has come to a finding that such facts were relevant for adjudication of the dispute. That the amendments were formal in nature. The other paragraphs sought to be incorporated are corrections of the numbers of the defendants etc.

With regard to the delay, it appears to this court that there is a specific pleading in paragraph 3 of the application, that on July 7, 2022, when the plaintiff received some documents from the daughter of late Harish Shaw, i.e., Smt. Anita Devi Shaw, she came to know that some necessary facts were missed out in the plaint and they were required to be incorporated. In the In the case of ***Rajesh Kumar Aggarwal and others vs. K.K.Modi and others 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 has been held that the merits of the amendment application are not to be looked into while deciding whether the application for amendment should be allowed or not. The merits of the contents will be decided in the suit. The fact that the petitioners are continuing a parallel proceeding is not an issue to be decided at this stage. The petitioners are at liberty to raise such point at the appropriate stage by filing an appropriate application. The delay which has been caused has been compensated by imposing cost.

Moreover, amendment should be liberally allowed.

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 amendment, in paragraph 70 of the decision. The relevant portion is quoted below:-

- (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.

The defendants are granted liberty to file their additional written statement within four weeks from date and the newly added defendants are at liberty to file their written statement to contest the suit as directed by the court.

It is made clear that as the evidence has commenced the suit should be disposed of within a year from the next date fixed.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)