

25.07.2023
Court No. 19
Item No.02
CP

C.O. 959 of 2022
with
CAN 3 of 2022

Mansoor Alam
Vs.
Dr. Maqsood Alam & anr.

Mr. Tarique Quasimuddin
Mrs. Zainab Tahur
....for the petitioner.

Mr. Saptanshu Basu, Sr. Advocate
Mr. Wasim Ahmed
Md. Kashif
....for the opposite parties.

This revisional application has been filed challenging an order dated April 1, 2022, passed by the learned Civil Judge (Senior Division), 2nd Court, Alipore in Title Suit No. 1629 of 2011. By the order impugned, an application under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure was rejected.

The defendant sought amendment of the written statement filed in connection with the suit of 2011.

According to Mr. Quasimuddin, learned advocate for the petitioner, the amendment was necessary for proper adjudication of the dispute between the parties. The paragraph sought to be

incorporated by way of an amendment is quoted below:

“ That Mr. Ameen Alam and Junaid Alam both sons of the defendant became the co-owners along with the defendant in the month of June, 2007 by executing Deed of Gift dated 26.06.2007, being Book No. I, Volume No. I, Page No. 1 to 24, Being No. 07982 for the year 2007 at the Office of the Additional Registrar of Assurances – I, Kolkata.”

The ground taken in the application as to why such fact had not been incorporated earlier, are inadvertence and bona fide mistake. It is further stated that in 2013 an additional written statement was filed wherein the same facts were sought to be incorporated. However, the said additional written statement was kept with the record, but there is no order of acceptance of the same. Realizing that a very important fact, necessary for adjudication of the real dispute between the parties had been left out, the application for amendment was filed.

Mr. Basu, learned senior advocate appearing on behalf of the opposite parties, opposes the prayer. He submits that after the amendment of 2002, the proviso to Order 6 Rule 17 of the Code of Civil Procedure would be a bar in the facts of this case. The application seeking amendment did not disclose how, in spite of due diligence, the fact sought to be incorporated was not within the knowledge of the defendant or could not be brought before the court.

Heard the learned counsel for the respective parties.

This is a suit for specific performance of the contract. The plaintiffs seeks registration of a flat which was agreed to be sold to the plaintiffs by the defendant. The defendant contends that his sons also became co-owners sometime in 2007 and this fact had not gone down in the written statement. In the opinion of this court, the amendment should be allowed for proper adjudication of the real controversy between the parties. The amendment sought is formal in nature, inasmuch as, the co-ownership of the flat was being brought on record. This is an important fact. Thus, in order to pinpointedly decide the real controversy and in order to avoid multiplicity of proceedings, the amendment is necessary. It is also not a case where the delay in filing the amendment application cannot be compensated by payment of cost to Mr. Basu's client. Moreover, amendment of a written statement must be allowed more liberally.

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 of governing amendment 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.”

In ***Revajeetu Builders and Develpers vs. Narayanaswamy and Sons and ors.*** reported in ***(2009) 10 SCC 84***, it was decided as follows:-

“26. In the same judgment of Usha Balashaheb Swami [(2007) 5 SCC 602] , the Court dealt with a number of judgments of this Court and laid down that the prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute the cause of action or the nature of claim applies to amendments to the plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.”

Thus, the revisional application is disposed of by allowing the amendment. The order impugned is set aside. The learned court below erred in rejecting the application on the ground of delay. Moreover, the court found that the said fact had already been stated in the additional written statement, although no order had been passed either allowing or accepting such additional written statement.

The amended written statement shall be filed within four weeks from date. Such written statement shall be accepted by the learned court, upon being satisfied that cost of Rs.5000/- had been paid to the plaintiffs.

The plaintiffs shall be entitled to file a rejoinder to the same, within two weeks thereafter. If necessary, an additional issue may be framed at the discretion of the learned court. The plaintiffs shall be entitled to recall their witness, if required.

As the suit is of 2011 and is at the stage of evidence, this court directs that the learned court below shall dispose of the suit within six months from the date of communication of this order.

The revisional application is accordingly disposed of. With such disposal, the connected application being CAN 3 of 2022 is also disposed of.

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

(Shampa Sarkar, J.)