

5th September,
2023
(AK)
06

C.O. 1180 of 2023

Bashishtha Singh @ Basistha Singh
Vs.
Amarkant Singh and others

Mr. Anjan Ray
Mr. Rahul Karmakar
Mr. Subhajit Chowdhury
...for the petitioner.

Mr. Anuj Singh
Ms. Niharika Singh
Mr. Ashok Kr. Singh
...for the respondent.

1. Learned counsel for the petitioner contends that the impugned order, allowing an amendment of the written statement filed by the defendant/opposite party, was passed without jurisdiction.

2. It is contended that the proviso to Order VI Rule 17 of the Code of Civil Procedure, as amended, clearly stipulates that if an amendment is filed at the stage of trial, the court has to record its satisfaction that despite due diligence, the party seeking the amendment could not have brought it earlier.

3. In the absence of any explanation in the application for amendment and in the order impugned, it is argued that such proviso has not been satisfied in the present case.

4. Apart from there being no explanation for the inordinate delay, particularly since the evidence of the plaintiffs has been closed, it is also argued by the petitioner that the amendment was wholly unnecessary, even if it is construed that its foundation was present in the written statement.

5. Learned counsel for the petitioner cites two judgments, the first in the case of *Pandit Malhari Mahale vs. Monika Pandit Mahale and others* reported at (2020) 11 SCC 549 and the second in the case of *Vijay Hathising Shah and another vs. Gitaben Parshottamdas Mukhi and others* reported at (2019) 5 SCC 360.

6. Learned counsel for the plaintiff argues that a semblance of a reason has been given by way of explanation for the delay in the amendment application and places reliance on paragraph no.5 of the amendment application in support of such contention.

7. Moreover, it is contended that the learned Trial Judge, while deciding the issue, took into consideration that the facts sought to be incorporated are important for the proper adjudication of the matter in dispute and that the amendment sought, if allowed, would not prejudice the other side.

8. Insofar as the argument that the amendment sought is unnecessary, it is argued that the said amendment, unless brought on record, would not furnish

details to the original arguments made in the written statement and it would be difficult for the defendant to lead evidence on the original pleadings.

9. A perusal of the judgments cited by the petitioner shows that the Supreme Court has consistently placed reliance on the proviso to Order VI Rule 17.

10. In *Vijay Hathising Shah (supra)*, the Supreme Court observed that the trial court therein was right in rejecting the amendment application for three reasons.

11. First, it was wholly belated; secondly, that the plaintiff filed the amendment application when the trial of the suit was almost over and the case was fixed for final arguments; and thirdly, the suit could still be decided even without there being any necessity to seek any amendment in the plaint.

12. Insofar as the first logic is concerned, in the present case, we have to keep in mind that the present revision has been filed not against an order rejecting an amendment but one by which an amendment has been allowed.

13. It has been consistently held by courts even after the coming into force of the proviso to Order VI Rule 17 that courts are generally liberal in granting amendment, if the same is necessary for proper and complete adjudication of a suit.

14. In the present case, the trial Judge rightly observed that the amendment sought to be incorporated is important for the proper adjudication of the matter in dispute.

15. The defendant is also justified in contending that in the event the details of the transactions are not mentioned specifically in the written statement, it might be difficult and complicated for the defendant to lead evidence on such transactions at the juncture when the defendant is called upon to lead evidence.

16. As to the second point preferred by the Supreme Court in *Vijay Hathising Shah (supra)*, in the present case, the suit is not fixed for final arguments but the defendants' evidence is still open.

17. In any event, it will be open to the plaintiff/petitioner to examine the witnesses of the defendant in cross-examination and, as such, the plaintiff cannot be said to be in much better if the amendment is allowed.

18. Moreover, if need be, the plaintiff can also recall its witness, if so required, to deal with the amended pleadings.

19. The third ground of the Supreme Court is also not applicable herein, since the amendment, although may not be of utmost importance for the suit, would definitely be required to be incorporated for a proper and complete

adjudication of the disputes in controversy between the parties.

20. Insofar as the proposition laid down in *Pandit Malhari (supra)* is concerned, the Supreme Court in the said case observed that the Civil Judge had not returned any finding that the court was satisfied that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

21. However, the decision was not restricted to such finding alone. The court went on to observe, by quoting a judgment of *Vidyabai vs. Padmalatha*, that the primary duty of the court is to decide whether the amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the Supreme Court held that the amendment is to be allowed.

23. Such condition is fulfilled in the present case.

24. The Supreme Court went on to observe that in view of the proviso appended to Order VI Rule 17, the power of the court is restricted and puts an embargo on exercise of its jurisdiction. Unless the jurisdictional fact is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint.

26. A composite reading of Order VI Rule 17 of the Code of Civil Procedure along with its proviso clearly indicates that the court may at any stage of the

proceedings allow either party to alter or amend the pleadings.

27. It is also settled by the consistent view of the Supreme Court that in case of amendments of written statements, the court is more liberal than that of complaints.

28. The said proposition has not been deviated from in the judgments cited by the petitioner as well.

29. In the present case, paragraph 12 clearly indicates that the defendants inherited the property of one Bhagwat Singh including the entire schedule property.

30. In the amended paragraph 12(a), the defendants only seek to bring on record the chain of transactions which confer title upon the defendant through Bhagwat Singh.

31. Although evidence is not required to be pleaded, the surrounding facts and chain of events leading to the issues involved in the suit are definitely required to be pleaded for a complete adjudication of the suit.

32. Hence, in the present case, the trial court being of the opinion that it was necessary for the complete adjudication of the suit to allow the amendment, the said exercise cannot be faulted.

33. In any event, the litigant being a layman, cannot be saddled with the liability of negligence for not having brought the facts on record previously.

34. In such perspective, taking a lenient view of the amendment sought by the opposite party, particularly since it aids in the complete adjudication of the controversy between the parties, there is no scope or requirement of interfering with the impugned order.

35. However, it is expected that the learned Civil Judge (Junior Division), Fourth Court at Howrah shall decide the suit between the parties bearing Title Suit No. 43 of 2016, as expeditiously as possible, preferably within six months from the date of communication of this order.

36. It is required to be observed here that since the defendant/opposite party occasioned a huge delay in taking out the amendment application, thereby putting the plaintiff/petitioner to much inconvenience, the costs imposed by the trial court is modified from Rs.700/- to Rs.7,000/- which shall be paid by the opposite party to the petitioner within a fortnight from date.

37. Accordingly, C.O. 1180 of 2023 is disposed of, with the minor modification of the impugned order as indicated above, in the light of the above observations.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)