

Item No. 31
04.10.2023
Court. No. 19
GB

C.O. 1337 of 2023

Sri Biraj Kumar Khanra
Vs.
Sri Shaktipada Jana & Ors.

Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. Rudranil Das

...for the Petitioner.

The order impugned is directed against an order dated March 4, 2023 passed by the learned Civil Judge (Junior Division), 2nd Additional Court at Contai, Purba Medinipur in Title Suit No.222 of 2019.

By the order impugned, the learned court allowed amendment of a written statement. The reasons assigned by the learned court are as follows:-

- a) The defendants came to know about the Nirupan Patra on November 26, 2021 and after obtaining the certified copy thereof, the application for amendment was filed.
- b) By the amendment, certain factual aspects arising from the Nirupan Patra was sought to be incorporated in the written statement.
- c) The nature and character of the suit would not be altered if such amendment is allowed.
- d) The law has been well-settled that amendment of a written statement should be allowed liberally.

e) Amendment to a written statement can also be allowed even if alternative and/or inconsistent pleas are incorporated.

Mr. Mukherjee, learned advocate for the petitioner challenges the said order on the ground that when there was a clear averment in the written statement that on the death of Srikanta Khanra, 'Ka' schedule property devolved upon his three sons, namely, Swadesh Ranjan Khanra, Chittaranjan Khanra and Satyaranjan Khanra, the incorporation of the Nirupan deed would amount to withdrawing the admission and assertion of right, title and interest in respect of the entire property.

Having perused the schedule of amendment and the written statement, this Court finds that the defendants who filed the application for amendment, did not seek to either withdraw or delete the averment with regard to devolution of the property upon the three sons of Srikanta Khanra. An alternative claim was sought to be added on the basis of a deed, certified copy of which, was obtained later. The amendment was allowed at the pre-trial stage. The law is well-settled that in case of amendment of written statement inconsistent and self-destructive pleas could be allowed. The amendment seeks to include further claim over the entire property. The correctness and truth of such statement was not required to be adjudicated at the stage of allowing the application. Merits of such statements will be adjudicated in the suit.

This Court deems it fit to refer to a decision of the Hon'ble Apex Court with regard to the liberal approach to be adopted by courts while considering amendment of written statements. Reliance is placed on ***Revajeetu Builders and Developers vs. Narayanaswamy and Sons and ors.*** reported in **(2009) 10 SCC 84**. Paragraph 26, of which is quoted below:-

“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.”

The Apex Court in the case of ***Andra Bank vs. ABN Amro Bank N.V. and others*** reported in **2007 SC 2511** observed that delay was no ground for refusal of prayer for amendment of a written statement. The only question to be considered by the Court was whether such amendment would be necessary for decision of the real controversy between the parties in the suit. The Court could not go into the question of merits of amendment. The Hon'ble Apex Court in the case of ***Ramchandra Sakharam Mahajan vs. Damodar Trimbak Tanksale (Dead) and others*** reported in **(2007) 6 SCC 737**, held that if the amendment enabled the Court to pin-pointedly consider the real dispute between the

parties and helped to decide the case more satisfactorily, the amendment ought to be allowed.

In the decision of ***Rajesh Kumar Aggarwal and others vs. K.K.Modi and others*** reported in ***AIR 2006 SC 1647***, the Apex Court held on similar lines and directed 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."

Under such circumstances, this Court does not find any material irregularity with the order impugned. The order impugned is upheld.

The petitioner is at liberty to file a replication to the said amended written statement within two weeks from reopening of the court after the puja vacation.

Accordingly, the revisional application is disposed of.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)