

31.07.2023
Court No. 19
Item No.120
CP

C.O. 1447 of 2023
Smt. Chitra Sengupta
Vs.
Smt. Bina Saha & anr

Mr. Dibyajyoti Raha
Mr. Pritam Mukherjee

...for the Petitioner.

This revisional application has been filed challenging an order dated April 18, 2023, passed by the learned Civil Judge (Junior Division), 1st Court at Alipore in Title Suit No. 3292 of 2010.

By the order impugned, the learned court below allowed an application for amendment filed by the plaintiff to incorporate subsequent events. The learned court found that the factum of transfer of the undivided share of the defendant No.2 in favour of the plaintiff by a registered deed dated September 12, 2019 was a subsequent event and ought to have been incorporated in the suit for complete adjudication of the controversy between the parties and to prevent multiplicity of proceedings. The learned court below discussed all the relevant decisions of the Hon'ble Apex Court in this regard and came to the conclusion that a liberal approach should be adopted.

The opposite party was compensated with cost, for the delay.

Considering the nature of the amendment, this court is of the view that the amendment was not barred by law. The amendment would prevent multiplicity of proceedings and was necessary for complete adjudication of the dispute between the parties.

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:-

(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.”

The decision of the Hon’ble Apex Court in the matter of **Revajeetu Builders & Developers vs. Narayanswamy & Sons**, reported in **(2009) 10 SCC 84 : [2015 (4) ICC (S.C) 127]** is referred to. The basic principles for grant or refusal of amendment articulated almost 125 years ago were still considered to be correct statement of law and our courts have been following the basic principles laid down in those cases. It would be relevant here to refer to the judgment of **Revajeetu Builders (supra)** where the Apex Court had not only traced the history of the provision but also after examining the English

and Indian precedents laid down the following guiding principles when dealing with the application under Order VI Rule 17:-

“FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

63. On critically analyzing 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.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.”

This court does not find any illegality in the order impugned. Cost has also been awarded in favour of the opposite party no. 1. The decision passed in *Surjit Singh & ors. Vs. Harbans Singh & ors.*, reported in AIR 1996 SC 135, is not applicable at this stage. Merits of the statements sought to be incorporated by way of an amendment, are not to be looked into by the court at the stage of deciding whether the amendment should be allowed or not. The decision in *Surjit Singh*(Supra), touches the merits of the amendment which shall be decided at the trial.

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 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."

All statements incorporated can be controverted in the additional written statement.

The learned advocate for the petitioner submits that challenging the aforementioned sale, a suit has

already been filed. The petitioner is always at liberty to approach the appropriate court, praying for analogous hearing of the suits, if permissible in law.

The revisional application is accordingly disposed of.

The plaintiffs will file the amended plaint within four weeks from date, if not already filed. The additional written statement shall be filed within four weeks thereafter.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)