

Item No. 10
17.07.2023
Court. No. 19
GB

C.O. 1702 of 2022

Sri Rajat Chowdhury & Anr.
Vs.
Akhil Haoladar & Ors.

Mr. Haradhan Banerjee,
Mr. Amitava Paine,
Mr. P.P. Mukhopadhyay,
Ms. Manideepa (Paul) Roy,
Mr. Nilmoni Das

...for the Petitioners.

Mr. Baidurya Ghoshal,
Ms. Aatrejee Dutta

...for the Opposite Party No.1.

The petitioners are the opposite party nos.1 and 2 in Misc. Case No.118 of 2018. The misc. case arises out of an application for preemption. The petitioners are aggrieved by an order dated May 6, 2022 passed by the learned Civil Judge (Junior Division), Uttar Dinajpur. By the order impugned, the learned judge rejected an application for amendment of the written objection filed by the petitioners. The learned court below rejected the application on the following grounds:-

- a) As the facts had already been narrated in the written objection filed by the opposite parties, insertion of new facts by way of an amendment to clarify paragraph nos.6 and 8 of the written objection, was not necessary.
- b) Trial had commenced and the amendment was belated.

- c) The facts were within the knowledge of the opposite parties.
- d) The factum of acquisition of titles, the chain deeds, the ownership of the property, etc. were well within the knowledge of the petitioners and the said facts should have been incorporated at the appropriate stage.
- e) Finally, due diligence was not shown by the petitioners.

Mr. Banerjee, learned advocate appears on behalf of the petitioners and submits that when the foundation of the facts sought to be incorporated by way of an amendment had already been laid in the written objection, the proviso to Order 6, Rule 17 of the Code of Civil Procedure would not come into operation. The paragraphs sought to be incorporated by way of an amendment were clarificatory in nature and an elaboration of the defence case which had already been stated in paragraphs 5, 6, 7 and 8 of the written objection.

Mr. Ghoshal, learned advocate for the preemptor in support of the order impugned, relies on the decision of the Hon'ble Apex Court in the matter of ***Chander Kanta Bansal versus Rajinder Singh Anand*** reported in ***(2008) 5 SCC 117***. According to Mr. Ghoshal, the Hon'ble Apex Court had time and again deprecated the practice of allowing belated amendments which were filed when trial had commenced. Unless due diligence was established by the party applying for such amendment, the learned courts,

should be slow to allow belated amendments as the proviso to Order 6, Rule 17 of the Code of Civil Procedure had been inserted in order to debar parties from incorporating frivolous pleadings by way of amendment applications, only to delay 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. In ***Revajeevu 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 and 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 enables the Court to pin-pointedly consider the real dispute between the parties and helps to decide the case more satisfactorily, the amendment ought to be allowed.

In the case of ***Raghu Thilak D. John vs. S. Rayappan*** reported in ***AIR 2011 SC 699***, it was held that amendment should generally be allowed, unless it was shown that permitting the amendment would be unjust and would cause prejudice to the opposite side, which could not be compensated by costs or would deprive him of a right which had accrued to him with the lapse of time. Amendment may also be refused if the same is barred by time.

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."

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 this case, the petitioners have already mentioned about how Sucheta Haoladar had transferred the land by a registered deed dated December 16, 1998. The devolution of

the property from Sucheta Thokdar to the J.N. Chowdhury Manufacturing Tea Private Limited has been mentioned in the written objection. The fact that the petitioners purchased the property from the heirs of Satish Chandra Halder, have also been pleaded in paragraph 6. Subsequently, by way of an amendment the title of Sucheta and the manner in which Sucheta became the absolute owner of the property has been elaborated. Further contention that in the first round of transfer, no preemption was filed by the co-sharers, has also been sought to be incorporated.

In my opinion, this fact does not change the nature and character of the suit. Merits of the said application shall be decided at the trial, on evidence. It is for the preemptor to prove co-sharership and right of pre-emption accruing out of claim as a co-sharer. It is for the defendant to rebut such claim. With regard to the belated application for amendment, after commencement of trial, the decision of ***State of Bihar and Others versus Modern Tent House and Another*** reported in ***(2017) 8 SCC 567*** is pressed into service, wherein the Hon'ble Apex Court held that if a proposed amendment on facts sought to elaborate pleadings in the written statement the same would not lead to the change of the defence and the amendment should be allowed.

Paragraph 8 is quoted below:-

“We have perused the amendment application filed by the appellants. We find that firstly, the proposed amendment is on facts and the appellants in substance seek to elaborate the facts originally pleaded in the written statement; secondly and in other words, it is in the nature of amplification of the defence already taken; thirdly, it does not

introduce any new defence compared to what has originally been pleaded in the written statement; fourthly, if allowed, it would neither result in changing the defence already taken nor will result in withdrawing any kind of admission, if made in the written statement; fifthly, there is no prejudice to the plaintiffs, if such amendment is allowed because notwithstanding the defence or/and the proposed amendment, the initial burden to prove the case continues to remain on the plaintiff; and lastly, since the trial is not yet completed, it is in the interest of justice that the proposed amendment of the defendants should have been allowed by the courts below rather than to allow the defendants to raise such plea at the appellate stage, if occasion so arises."

However, for the delay caused by the petitioners, the defendants can be compensated with cost. The petitioners shall be allowed to file the amended written objection within three weeks subject to payment of cost of Rs.5,000/-. Such cost shall be paid to the preemptor within two weeks from date. The preemptor shall grant a receipt to the petitioners. The learned court below shall allow the preemptor to file rejoinder to the said amended written objection. A separate issue may be framed if the learned court deems it fit. An additional affidavit-in-chief may be filed by the P.W. in view of the further facts which have been allowed to be incorporated in the written objection.

The order impugned is set aside.

Accordingly, the revisional application is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)