

19.09.2023
Sl. No.8(DL)
srm/s.biswas

C.O. No. 2861 of 2022
With
CAN 1 of 2023
Debapriya Ghosh
Versus
Laxmi Kanta Mondal & Ors.

Mr. Srinjoy Das,
Mr. Pooran Pal,
Mr. Debraj Dutta

...for the Petitioner.

Mr. Rahul Karmakar,
Mr. Sourav Gucchait,
Ms. Ishita Kundu

...for the Opposite Parties.

Re: CAN 1 of 2023

CAN 1 of 2023 is not available with the records. A photocopy of the said application is taken up and accepted as true copy of the original, by consent of the parties.

This is an application for substitution of the heirs and legal representatives of the opposite party no.1/Lakshmi Kanta Mondal. It appears that one of the sons, namely, Alok Kumar Mondal is already on record.

The application for substitution is allowed by substituting Ashok Mondal, Smt. Manasi Das and Smt. Shefali Rani Mondal, all of 77/1, Bidhan Sarani, Police Station –

Burtolla, Kolkata–700006, as the heirs and legal representatives of the deceased Lakshmi Kanta Mondal.

The cause title be amended and their names be incorporated as opposite party Nos.1 (a) to 1 (c) respectively. The petitioner is directed to amend the cause title here and now, in order to save the time.

CAN 1 of the 2023 is allowed and disposed of accordingly.

C O 2861 of 2022

The revisional application arises out of an order dated August 18, 2022 passed by the learned Judge, 2nd Bench, City Civil Court at Calcutta, in Title Suit No.1046 of 2018.

By the order impugned, the learned court below allowed the prayer for amendment of the written statement filed by the defendant in the suit, but rejected the claim for addition of the Chief Executive Officer, Board of Wakfs, West Bengal and Sk. Golam Kader Wakf Estate, as party defendants.

Aggrieved, the defendant has approached this Court seeking setting aside of the order impugned.

By the amendment, the petitioner sought to introduce the question of maintainability of the suit on the ground that as the plaintiffs were the tenants under Sk. Golam Kader Wakf Estate, which was a Wakf property, the jurisdiction of the civil

court operated as a bar. The amendment was allowed by the learned trial Judge. The amended written statement was filed. The petitioner also filed another application for addition of the Chief Executive Officer, Board of Wakfs, West Bengal as also Wakf Estate as defendants, on the ground that the presence of the said defendants were necessary for proper adjudication of the dispute between the parties. The specific defence case of the petitioner was that the suit was not maintainable on the ground of lack of jurisdiction in terms of Section 83 of the Wakf Act, 1995.

Mr. Das, learned Advocate appearing on behalf of the petitioner submits that the amendment to Section 83 of the Wakf Act included all disputes between landlord-tenant, lessor-lessee etc., in relation to a Wakf property. When the issue of maintainability of the suit is a relevant issue to be decided by the learned trial court the addition of the Wakf Estate as also the Chief Executive Officer, Board of Wakfs, West Bengal as defendants, would be proper and justified.

Mr. Karmakar, learned Advocate appearing on behalf of the opposite parties submits that the addition of the Chief Executive Officer, Board of Wakfs, West Bengal and Wakf Estate would be contrary to the order passed by the High Court in FAT No.243 of 2021. According to Mr. Karmakar, the

legislature has consciously omitted suits between the licensor and the licensee from the purview of Section 83 of the Wakf Act. According to Mr. Karmakar, the Hon'ble Division Bench of the High Court also observed that the dispute was between the tenant under a Wakf and his licensee.

In the opinion of the Court, the decision of the High Court was rendered in the context of rejection of the plaint. The learned trial court had rejected the plaint on the ground of lack of jurisdiction of the court and the alternative remedy before the Wakf Tribunal. The rejection of the plaint was challenged by Mr. Karmakar's client before the High Court in the first appeal. The Hon'ble Division Bench was of the view that it was elementary that in deciding a point of demur, the court was required to see whether the plaint disclosed a cause of action. The averments in the plaint were required to be taken as true and correct for the purpose of jurisdiction. On a plain reading of the plaint, if it appeared that the suit was barred by law, the court would reject the plaint by invoking the power under Order VII Rule 11 of the Code of Civil Procedure. However, the Hon'ble Division Bench went on to observe that from a plain reading of the plaint, it appeared that the dispute was between a tenant of a Wakf property and licensee and the plaint could not be rejected at its initial stage.

The order of the Hon'ble Division Bench was restricted to the determination of the issue whether the plaint could be rejected at the threshold. However, the observation of the Hon'ble Division Bench cannot prevent the learned trial court from deciding the issue of maintainability. A plaint is rejected on a formal reading thereof, but the issue of maintainability will be decided upon evidence and this Court is of the opinion that when the learned trial Judge allowed an amendment challenging the maintainability of the suit, the presence of the Chief Executive Officer, Board of Auqf, West Bengal and Auqf Estate are necessary.

The apprehension of Mr. Karmakar that by adding the Chief Executive Officer, Board of Auqf, West Bengal and Auqf Estate, the defendant would again seek transfer of the suit to the Wakf Tribunal is misconceived. While deciding the suit, the question of jurisdiction and maintainability as has been raised in the written statement will be decided along with the other issues in the suit. The Chief Executive Officer, Board of Wakfs, West Bengal and Wakf Estate shall be added as defendants.

The order impugned is set aside to the extent of rejection of the prayer for addition of parties. The application under Order 1 Rule 10(2) of the Code of Civil Procedure is allowed.

The learned court below is directed to allow the amendment of the cause title by incorporating the defendants as per the application under Order I Rule 10(2) of the Code of Civil Procedure. Usual notices shall be issued upon the added defendants and the suit shall proceed in accordance with law.

The revisional application is disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)