

11.01.2023
Item No.9
Ct. No.7
CHC
(disposed of)

C.O. 2872 of 2022

**Idu Mia & anr.
Vs.
Iqbal Ahmed & ors.**

Mr. Shyamal Chakraborty,
Mr. Debajyoti Mondal
...for the petitioners

Mr. Anshunath Chakraborty,
Mr. Gourab Mukhopadhyay
...for the opposite parties

Subject-matter of challenge in this case is against the rejection of a prayer for amendment, proposed by the petitioners/defendants, after the conclusion of their evidence, in a suit for eviction of a tenant.

Admittedly, this is a suit of 2010. The suit is for eviction of tenant. The petitioners/defendants filed written statement taking a definite plea that plaintiffs are having suitable accommodation elsewhere, though the particulars of which could not be mentioned in the written statement.

Mr. Chakraborty, learned advocate appearing for the petitioners/defendants submits that the mischief provided under Order 6 Rule 7 proviso may not be attracted over here, because the petitioners have gathered knowledge of suitable accommodation of opposite parties/plaintiffs from a reliable source.

It is thus contended by Mr. Chakraborty that proposed amendment is necessary for the fair adjudication of the matter in controversy between the parties.

Per contra, Mr. Anshunath Chakraborty, learned advocate appearing for the opposite parties disputes with the submission, advanced by Mr. Shyamal Chakraborty, replying to the effect that apart from making cross-examination of plaintiffs' witness, petitioners/defendants have examined some witnesses, which were also cross-examined by the plaintiffs.

It is thus submitted by the opposite parties that when the suit has already been set for argument, even after availing of the opportunity of cross-examination of plaintiffs' witness as well as after adducing evidence of the defendants, the exercise now undertaken by the petitioners are nothing but purposive one, and simply to cause delay to the disposal of the suit.

Having considered the submission of both sides, it appears that amendment has been proposed at a stage when the trial of the suit was at the verge of conclusion. Though the petitioners have made out a case that from a reliable source, petitioners have gathered knowledge about the availability of suitable

accommodation of the opposite parties/plaintiffs, but the names, from whom the petitioners have gathered have not been disclosed in so many words. More so, not a single scrap of paper is found produced by the petitioners in support of the prayer for proposed amendment. No further elaboration is necessary. No interference is called for.

However, petitioners are at liberty to agitate the issue, now raised at the time of argument of this case, upon collection of convincing material, if any, and if any such point is raised regarding availability of alternative accommodation of the plaintiffs, apart from the evidence already adduced, the same may be taken into account by the court below, at least by giving a judicial notice thereon, subject to the discretion of court below, and resolve the same in accordance with law.

With this observation/direction the instant revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)