

09.10.2023  
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Ct. no. 652  
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**CO 3510 of 2018**

**Anchor Tracon Pvt. Lrd.  
Vs.  
Dinobandhu Chowdhury & Anr.**

Mr. Rachit Lakhmani  
Mr. D. Halder ...for the Petitioner

Ms. Juin Dutta Chakraborty  
Mr. Bidhan Modak ...for the O.P. no. 1

Affidavit of service filed by the petitioner is taken on record.

On the basis of the prayer made by the petitioner, let CO 3510 of 2018 be detagged from CO 3509 of 2018.

This is an application under Article 227 of the Constitution of India against order no. 80 dated 23<sup>rd</sup> July, 2018 passed by the learned Civil Judge, Junior Division, 2<sup>nd</sup> Court, Alipore in Ejectment Suit no. 509 of 2008. By the impugned order, the petitioner's application for amendment under Order VI rule 17 of the Code of Civil Procedure was rejected by the court below.

It has been contended by the petitioner that in the year 2008, the plaintiff no. 1 filed aforesaid suit for eviction on the ground of default and reasonable requirement against the defendant/tenant/opposite party no. 1. The defendant/opposite party no. 1 appeared in the said suit and also filed written statement. Thereafter, the

plaintiff no. 2, has purchased the suit building by a sale deed and acquired exclusive right title and interest in the suit property from the erstwhile owner plaintiff no. 1 during pendency of the suit. Accordingly, the ownership of plaintiff no. 1 has been devolved upon the plaintiff no. 2 on 2<sup>nd</sup> January, 2014. Now the plaintiff No.2/ purchaser has filed an application for amendment of the plaint long after moratorium period to incorporate the ground of his reasonable requirement in the plaint by way of filing an application under Order VI rule 17 of the Code.

Learned court below after considering the prayer made by the plaintiff no. 2/petitioner herein, rejected the application for amendment on the ground that if the proposed amendment is allowed, it will change the nature and character of the suit and such amendment cannot be regarded as formal in nature.

Learned counsel for the petitioner submits that learned court below has erred in observing that if the proposed amendment is allowed, it will change the nature and character of the suit without applying his judicial mind to the entire facts and circumstances of the case. In fact, the subject matter of amendment is the real controversy between the parties, and if the proposed amendment is allowed, even then it will not cause any prejudice to the other side nor it will change the nature and character of the suit as the suit for eviction will

remain unchanged. In fact said amendment is formal in nature. He further alleged that the court below was predetermined to reject the said application as clearly transpires from the nature of finding of the court below. Accordingly, the order impugned is bad in law and not sustainable in the eye of law. Thus, he has prayed for rejection of the amendment application.

Learned counsel for the opposite party no. 1 raised strong objection contending that the proposed amendment is not at all required for the purpose of adjudication of the suit. In fact, after purchase, purchaser/plaintiff No.2 has sold some of the flats in favour of the stranger purchasers which clearly depicts that he has no requirement of the suit premises. She further submits that if the proposed amendment is allowed, it will change the nature and character of the suit. The court below was absolutely justified in passing the order impugned and the order impugned does not call for any interference.

Perused the order of amendment and considered. It appears that the petitioner herein has specifically contended that erstwhile plaintiff no. 1 filed the aforesaid suit against the defendant on the ground of default and reasonable requirement but during pendency of the suit, he purchased the suit property from the plaintiff no. 1 by dint of registered deed dated 2<sup>nd</sup> January, 2014 and subsequently his name has been incorporated in the

cause title of the instant suit as plaintiff no. 2. However, since purchase plaintiff no.2 was continuing the said suit for eviction only on the ground of default. Now after expiry of the moratorium period, he wants to incorporate the reasonableness of his requirement in the plaint in respect of the suit premises by way of amendment. In such view of the matter, the proposed amendment is very much required for proper adjudication of the petitioner/plaintiff no. 2's case of reasonable requirement and proposed amendment if allowed, it will change the nature and character of the suit as the suit for eviction will remain a suit for eviction against the tenant even after proposed amendment of plaint.

A division Bench of this court in Smt. Uma Mishra (sanyal) Vs. Monoranjan Sinha & others [1992 (2) CLJ 215] held that prayer for amendment after expiry of statutory period from acquisition to include ground of reasonable requirement for own use and occupation in a suit instituted on any other legally permissible ground, is permissible.

In such view of the matter, the order passed by the learned court below by observing that the proposed amendment if allowed, it will change the nature and character of the suit is perverse and is liable to be set aside.

Accordingly, C.O. 3510 of 2018 is allowed and the plaint is accordingly amended as per schedule of the

amendment application. The plaintiff is directed to file amended plaint within six weeks from the date of communication of the order and the court below will give an opportunity to the defendant to file additional written statement if any, within two weeks thereafter.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

**(Ajoy Kumar Mukherjee, J.)**