

October 10, 2023
Sl. No.37
Court No.19
s.biswas

CO 3087 of 2023

Feroz Khan

vs.

Meerazudin Khan and another

Mr. Vinay Kumar Purohit

... for the petitioner

This revisional application arises out of an order dated August 14, 2023 passed by the learned Judge, 5th Bench, City Civil Court at Calcutta in Title Suit No.06 of 2012.

By the order impugned dated August 14, 2023, the learned court below allowed the application for amendment of the written statement in Title Suit No.06 of 2012. The schedule of the amendment is quoted below:

S C H E D U L E

- 1) To incorporate the below mentioned paragraphs after paragraph no.11 of the Written Statement and to insert therein -
“11A. The defendants are occupying and/or holding two rooms on the First floor of the premises No.39, Mirza Ghalib Street, Police Station – Park Street, Kolkata – 700016”

It appears that the defendants wanted to incorporate another paragraph after paragraph 11 of the written statement, as paragraph 11A. By such amendment, the fact that the defendant was occupying two rooms on the first floor of the premises, was sought to be incorporated. The

learned court found that the plaint did not indicate the number of rooms comprising of the tenancy. It was only pleaded in paragraph 3 of the plaint, that Yatim Khan was a co-tenant with the said Habib Khan. Yatim Khan (predecessor of the defendants) surrendered one of the two rooms of the joint tenancy after the demise of Habib Khan. The learned court below was of the view that the amendment should be allowed as the delay was not intentional. On better legal advice and upon change of the learned conducting advocate, the defendants were asked to incorporate the extent of the tenancy, in the written statement. The amendment was neither barred by limitation nor did it constitute a new defence. The amendment did not amount to withdrawal of admission. As the trial had commenced, cost of Rs.5000/- was imposed.

The learned advocate for the plaintiff submits that a new cause of action has been set up. The amendment was belated and the fact sought to be incorporated by the amendment was well within the knowledge of the defendant no.1. In the notice of eviction, the plaintiff had mentioned that Yatim Khan was a tenant in respect of the one room. In paragraph 3 of the plaint also, the plaintiff stated that the predecessors of the defendants had continued with the tenancy in respect of one room.

In the written statement, the defendant no.1 denied the contention of the plaintiff that one of the two rooms had been surrendered.

However, the quantum of the rooms under the occupation of the tenant had not been mentioned in the written statement. By the amendment, the defendant no.1 wanted to introduce the fact that the tenancy was in respect of the two rooms. Such fact was an elaboration of the defence and quantification of the extent of tenancy. The same did not amount to creation of new cause of action. There was no withdrawal of any admission. On account of the delay, the court has already awarded Rs.5000/- as cost.

The correctness of the statements made in the amendment application will be decided at the trial. Whether the defendant occupied one or two rooms after having surrendered the other room, are matters of evidence. The plaintiff will file an additional written statement within two weeks after reopening of the court after the puja vacation.

In any event, this is a suit for eviction of the trespasser and the same shall be decided on the basis of available records, evidence and the principles of law. The amendments incorporated will not change the nature and character of the suit. As the suit is at the stage of evidence, the same shall be

disposed of within a period of four months from the next date fixed, without granting unnecessary adjournments.

The revisional application is thus dismissed.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)