September 25, 2023
Sl. No.47
Court No.19
s.biswas

CO 3142 of 2023

Asiatic Oxygen and Acetylene Co. Ltd.
vs.
M/s. B.J.M. Industries Ltd.

Mr. Debjit Mukherjee
Mr. Kaushik Banerjee
Ms. Rashmita Sen
... for the petitioner

Ms. Nilima Das
... for the opposite party

The revisional application has been filed challenging the order dated August 17, 2023, passed by the learned Civil Judge (Junior Division), 1st Court at Howrah in Title Suit No.5361 of 2014.

By the order impugned, the learned court below allowed the application for amendment of the plaint. The learned court below found the subsequent events, regarding illegal activities of the defendants in respect of the suit property and the damage sustained by the property, were sought to be incorporated. Further fact that the defendant continued to default in paying the municipal tax was also sought to be incorporated. The court held that the amendments would neither change the nature and character of the suit nor would it prejudice the defendants. The statements sought to be incorporated were to be proved by the plaintiff, at the trial.

Mr. Mukherjee, learned advocate for the petitioner, vehemently challenges the propriety of the order impugned, on the following grounds:

a) That the proviso to Order 6 Rule 17 of the Code of Civil Procedure was a bar.

b) Payment of municipal tax was already noted and recorded by a Co-ordinate Bench and accordingly, a proceeding under Order 7(1) and 7(2) of the West Bengal Premises Tenancy Act was disposed of by taking into account the said issue.

c) The application for amendment did not incorporate a single explanation as why delay had occurred in filing the same.

d) The fact that the municipal tax was paid by the tenant was evident from the of this court, in CO 4201 of 2019.

Having considered the contention of Mr. Mukherjee, this court comes to following conclusions:

a) Paragraph 5A of the schedule of amendment, deals with incorporation of subsequent facts and allegations that certain destruction and damage had been sustained by the property during the pendency of the suit,

b) Thus, this amendment is not barred by the proviso to Order 6 Rule 17 of the Code of

Civil Procedure. The truth, veracity and correctness of such statement will be decided at the trial. It is for the plaintiff to prove such facts at the trial and if the same cannot be proved, the issues will be decided against the plaintiff.

c) With regard to 5B, this court is of the view that such statement also relates to alleged discontinuation in payment of the occupier's share of the municipal tax.

Mr. Mukherjee vehemently argues that the records would reveal that the municipal taxes had been paid. Moreover, when the plaint was filed in 2005, such contention was available. It was never raised. Allowing incorporation of such fact at the stage of evidence, when due diligence had not been averred, was erroneous.

The contentions of Mr. Mukherjee is not accepted by this court. Paragraph 5 of the plaint, which is quoted below, indicates that the plaintiff had alleged that the municipal taxes, security guard's charges and the electricity bills of the tenanted property, had not been paid.

The relevant portion of paragraph 5 is quoted below:

> "5. It is submitted further by the plaintiff that the defendant has also not

> been paying the amount of electric consumption charges despite full enjoyment of electricity and also Municipal Tax and Security Guard charges."

5B of the schedule was an extension of such averment, that non-payment of the municipal tax of the occupier's share, continued. Again, the correctness of such contention will be decided at the trial and if the plaintiff is unable to prove the same, he will suffer the consequences.

Merits of the amendment is not to be looked into. In the case of ***Rajesh Kumar Aggarwal and others vs. K.K.Modi and others reported in AIR 2006 SC 1647***, the Apex Court held 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."

Moreover, the petitioner can also contradict the statements, by filing additional written statement. Such additional written statement be filed within a week from reopening of the court after the ensuing puja vacation.

The revisional application is thus disposed of, without any interference.

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.)