

17.10.2023
Item No.2
gd/ssd

CO/3176/2023
PARTHA SARATHI DUTTA
VS
LIFE INSURANCE CORPORATION
OF INDIA LTD. AND ORS.

Ms. Anyasha Das
..for the Petitioner.

Mr. Rishabh Dutta Gupta,
Ms. Tanushree Dasgupta
..for LIC.

The Order No.46 dated 18th August, 2023 passed by the learned Civil Judge (Junior Division), 2nd Court at Durgapur in Title Suit No.40 of 2018 is under challenge in this civil revisional application. By the order impugned the application for amendment of plaint was rejected.

The learned advocate appearing for the petitioner submits that the application for amendment of plaint was filed to correct the typographical error which had crept in the schedule of the suit property as well as the reference of the deed in question.

The learned advocate for the opposite party no.1 vehemently opposes the prayer for amendment of plaint on the ground that the application has been filed at the belated stage i.e. after the commencement of trial. She submits that there is no

explanation for the belated filing of the said application for amendment of plaint.

The learned advocate for the opposite party no.1 placed reliance upon a decision of the Hon'ble Supreme Court in the case of *State of Madhya Pradesh v. Union of India and Another* reported in (2011) 12 SCC 268 in support of her contention that after the trial has commenced the application for amendment cannot be allowed unless the applicant satisfied the due diligence test.

The learned advocate appearing for the opposite party no.2 adopts the argument of the learned advocate for the opposite party no.1.

Heard the learned advocates for the parties and perused the materials placed.

The instant suit is a suit for declaration that the defendant nos.1 and 2 have no right to claim or deduct from the salary of the plaintiff through HDFC Bank or whole of the amount of dues in installments in respect of Flat No.4D, Sakuntala Apartment which is in the name of the plaintiff and the defendant no.2 having 50% share each. In the schedule of the plaint the suit property has been described as Flat No.4D in the 4th floor of Sakuntala Apartment.

The plaintiff filed this application for amendment of the plaint to correct the typographical error of the number of the flat which is the subject

matter of dispute between the parties in the pending suit.

It further appears from the application for amendment that the plaintiff has sought to correct the typographical error which has crept in the number of the deed by virtue of which the plaintiff and the defendant no.2 are claiming to have acquired title in respect of the flat in question.

It is not in dispute that the deed of conveyance in respect of which the plaintiff is claiming right, title and interest of the flat has already been exhibited.

Three Hon'ble Judges of the Supreme Court of India in the case of Sajjan Kumar v. Ram Kishan reported at (2005) 13 SCC 89 while dealing with more or less similar issue as to correction of description of the suit premises in the plaint held that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and refusal to permit the amendment would create needless complications at the stage of execution in the event the plaintiff succeeds in the suit.

The Hon'ble Supreme Court held thus:

"5. Having heard the learned counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law

and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if Section 115 CPC would not have been strictly applicable. It is true that the plaintiff-appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff-appellant succeeding in the suit.”

It is well settled that the proviso to Order VI Rule 17 of the Code limits the power of the court in allowing an amendment application after commencement of trial unless the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial and there is also no quarrel to the proposition laid down by the Hon’ble Supreme Court in the case of *State of Madhya Pradesh* (Supra) but taking note of the fact that the amendment sought for is only for correction of the description of the suit premises and for the correction of the number of the deed and also taking into consideration the fact that the deed in question has already been marked as an exhibit in the suit, this court is of the considered view that the proposed

amendment is necessary for the purpose of deciding the real questions in controversy between the parties.

In view thereof, the application for amendment of plaint filed by the petitioner herein on 19th April, 2023 stands allowed subject to payment cost of Rs.5,000/- by the petitioner to the opposite party no.2 herein on or before November 24, 2023, failing which the order shall stand automatically recalled without any reference to this court.

CO 3176 of 2023 stands allowed.

There will be no order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)