

11.10.2023
Item No.39
gd/ssd

CO/3210/2023

JAYANTA KUMAR SHEE
VS
M/S. KALINAGAR SEA FOODS PRIVATE
LIMITED & ORS.

Mr. Masud Mallik
..for the petitioner.

Mr. Madan Mohan Roy
..for the O.P. No.6.

The Order No.61 dated August 19, 2023 passed by the learned Civil Judge (Junior Division), 1st Additional Court at Contai, District Purba Medinipur in Other Suit No.59 of 2017 is under challenge in this application under Article 227 of the Constitution of India.

By the order impugned the application of the plaintiff/petitioner herein for amendment of plaint was rejected.

The learned Advocate appearing for the petitioner submits that while considering an application for amendment of the plaint, the Court should not go into the merits of the proposed amendment. He further submits that the trial of the suit is yet to commence and, therefore, the learned Trial Judge was not justified in holding that the

application for amendment of plaint has been filed at a belated stage.

Heard learned Advocate for the opposite party on such submission.

After going through the plaint, it appears that the plaintiff has stated that there was an original agreement between the parties.

From the schedule of the amendment application, this Court finds that the plaintiff is now trying to introduce a new case by stating that there was a written agreement between the parties. The learned Trial Judge observed that there is no whisper of any registered agreement at any point of time. The learned Trial Judge further recorded that the plaintiff is trying to make out a new case by way of amendment of plaint.

After going through the order impugned, this Court finds that the learned Trial Judge assigned cogent reasons while rejecting the application for amendment of plaint.

The learned Advocate for the petitioner placed reliance the judgment of the Hon'ble Supreme Court in the Case of Life Insurance Corporation of India v. Sanjeev Builders Private Limited and anr. reported at 2022 LiveLaw (SC) 729 and placed reliance upon the paragraph 70 of the said judgment. In paragraph 70 (x), it has been specifically observed that the

application must be disallowed if a new case is sought to be made out.

Since this Court has already observed that by way of proposed amendment the plaintiff is trying to make out a new case, this Court is of the considered view that the aforesaid decision of the Hon'ble Supreme Court is of no assistance to the case of the petitioner.

This Court, therefore, is not inclined to interfere with the order passed by the learned Trial Judge,

Accordingly, CO 3210 of 2023 stands dismissed.

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.)