

12.12.2023
Court No. 19
Item no.09
CP

C.O. No. 3170 of 2022
Asiatic Oxygen and Acetylene Co. Ltd.
Vs.

M/s. B.J.M. Industries Ltd.

Mr. Debjit Mukherjee
Ms. Rashmita Sen
Mr. Kaushik Banerjee
Ms. Sarbani Ghosal

.....for the petitioner.
Ms. Nilima Das

.....for the opposite party.

The revisional application is directed against an order dated August 17, 2022, passed by the learned Civil Judge (Junior Division), 1st Court, Howrah in Title Suit No. 84 of 2005 which was renumbered as Title Suit No. 10013 of 2014.

By the order impugned the learned court allowed an amendment application to the extent of paragraph 5A of the schedule. 5A of the schedule reads as follows:-

“5A” The plaintiff states that at present it has come to the knowledge of the plaintiff that the defendant has damaged the suit premises by destroying the factory sheds of the suit premises and have changed the nature and character of the suit premises and the defendant is trying to do some building work thereat illegally and forcibly without having any right, title and interest in the suit property save and except a statutory tenant.”

Schedule 5B was not allowed to be incorporated by way of an amendment.

It appears that during the pendency of the suit, the plaintiff wanted to incorporate such facts, which the plaintiff came to know later. The amendments with regard to the damage caused to the suit property by destruction of the factory sheds and the change in the nature and character of the suit premises, was sought to be introduced in the plaint. The further fact that the defendant was trying to construct some buildings illegally and forcibly, without having any right, title and interest on the said property was also included.

Mr. Mukherjee, learned advocate for the petitioner, submits that the amendment was taken out at a belated stage. That no explanation was offered as to why such amendment application was filed at such a belated stage. The contentions of the petitioner were not correct. There was an inspection of the suit property, and it was found that there was no damage at all and no construction was going on.

Coming to the application for amendment, paragraph 3 of the same states that on April 12, 2022, the plaintiff came to know that the defendant was doing some illegal acts in violation of the law, on the property in question.

Thus, this court is of the view that the plaintiff wanted to incorporate subsequent events which came to the knowledge of the plaintiff sometime in April 2022.

Under such circumstances, the proviso to Order 6 Rule 17 of the Code of Civil Procedure would not apply. The contention of Mr. Mukherjee is not accepted. Moreover, the contentions of the petitioner, with regard to the damage caused to the property on account of the alleged illegal acts of the defendant and attempts to raise constructions, are matters to be decided at the trial. Merits of the amendment are not to be gone into, at the time of deciding whether an amendment application should be allowed or not.

Accordingly, the order impugned does not call for any interference.

Time to file the amended written statement is extended by a period of four weeks.

The revisional application is accordingly dismissed.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)