

28.8.2023
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Ct. no. 652
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CO 3226 of 2015

**Sahaji Finance Private Limited
Vs.
Apu Chowdhury**

Mr. S. Basu, Sr. Adv.
Mr. Saumyen Datta
Mr. Rajendra Nath Barik ...for the Petitioner

Mr. Dhananjay Nayak ...for the Opposite party

Being aggrieved and dissatisfied with the order no. 45 dated 14.5.2015 passed by the learned Civil Judge (Junior Division), Siliguri, in Title (Eviction) Suit no. 32 of 2009, present application under Article 227 of the Constitution of India has been preferred.

The petitioner as plaintiff filed aforesaid suit for eviction and recovery of khas possession along with arrear rent and mesne profit against the opposite party herein inter alia on the ground of reasonable requirement. The opposite party herein entered appearance in the aforesaid suit and contesting the same. During pendency of the suit, the petitioner herein filed one application under Order VI Rule 17 of the Code of Civil Procedure for amendment of the plaint by describing the nature of the suit premises and its location. The opposite party herein filed written objection against the said application. Learned court below by the impugned order, was pleased

to reject the application for amendment inter alia holding that the petitioner failed to describe the situation for not raising the point earlier and this offends the legislative intention in inserting the proviso to order VI, Rule 17 of the Code of Civil Procedure and also the use of the word “shall” in the proviso.

Mr. Basu, learned counsel for the petitioner submits that the court below acted illegally and with material irregularity in rejecting the proposed amendment and the learned court below failed to convince that the word “shall” used in the proviso, is not mandatory but it is directory. Learned court below has ample power to allow the amendment of pleading if it does not change the nature and character of the suit and does not cause injustice or prejudice to the other side. Proposed amendment is absolutely necessary to prove the ground of reasonable requirement. Accordingly, he has prayed for setting aside the order impugned and to allow the prayer for amendment of plaint to avoid multiplicity of proceedings.

Learned counsel for the petitioner in this context has relied upon a judgment passed by a Division bench of this court in **Sree Sree Iswar Radha Behari Jew and Sree Sree Iswar Salgram Jew Vs. Malati P. Soni** reported in **AIR 2019 Cal 131**.

Mr. Nayek learned counsel for the opposite party submits that the proposed amendment is contrary to the

averment made in the plaint. By way of proposed amendment, the plaintiff/petitioner wants to incorporate one more ground which is not in their plaint. Furthermore, issue has already been framed and as such, the trial has commenced and the plaintiff/petitioner failed to make out a case of “due diligence” and they have not clarified what prevented them from filing the said prayer for amendment earlier before commencement of trial. Accordingly, in view of the proviso to Order VI Rule 17 of the Code, proposed amendment if allowed, will cause prejudice to the opposite party and as such it cannot be allowed. He further contended that the order impugned does not call for interference.

I have considered the submissions made by both the parties. It is not in dispute that the suit has been filed seeking eviction of premises tenant on the ground of reasonable requirement along with other grounds. On perusal of the schedule of amendment, it appears that the proposed amendment relates to elaboration of plaintiff's case of reasonableness for his requirement which ground has already been taken in plaint.

It has been reiterated by different courts that the dominant purpose of order VI, Rule 17 is to minimize litigation. Ordinarily courts should allow all amendments that may be necessary for determining the real controversy between the parties, provided it does not cause injustice or prejudice to the other side. In the

present context “real controversy” inter alia is whether plaintiff is entitled to get decree of eviction on the ground of reasonable requirement. Proposed amendment is an attempt to elaborate reasonableness of plaintiff’s requirement. At this stage court is not supposed to go into correctness or falsity about the contents of amendment application. In short while deciding applications for amendment, if it is shown that the application is *bonafide*, legitimate, honest and necessary for proper adjudication of suit, court must not refuse the same.

Furthermore, the main objection raised by the opposite party/defendant is that in view of the proviso, to Order VI Rule 17, the proposed amendment cannot be allowed as the trial has commenced. In this context, learned counsel for the petitioner submits that issue has been framed but evidence has yet been started. The order impugned also indicates that the next date was fixed for peremptory hearing.

Supreme Court in ***Baldev Sing and others Vs. Manohar Singh & another***, reported in **(2006) 6 SCC 498** clarified the position in this context in paragraph 17, which runs as follows:-

“17. Before we part with this order, we may also notice that proviso to Order 6 Rule 17 CPC provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the suit. From the record, it also appears that the suit was not on the verge of conclusion as found by the High Court and the trial court. That apart, commencement of trial as used in proviso to

Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted hereinbefore, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 CPC which confers wide power and unfettered discretion to the court to allow an amendment of the written statement at any stage of the proceedings.”

The Division Bench of this court in **Sree Sree Iswar Radha Behari Jew and Sree Sree Iswar Salgram Jew’s case (supra)** has clearly held in paragraph 39 which is quoted below:

“39. The question raised in the reference is, thus, answered as follows: the expression “commencement of trial” in the proviso to Order VI Rule 17 of the Code of Civil Procedure would imply the date when the court first applies its mind after the affidavit of evidence is filed and when the first witness proves his affidavit of evidence or such witness seeks to prove a document for it to be tendered in evidence or the cross-examination of such witness begins, whichever is earlier.”

In such view of the matter, when the evidence of the present case has not yet been started, the court below ought to have allowed the application under Order VI Rule 17 of the Code in order to adjudicate the real controversy between the parties effectively and conclusively. Moreover in my view proposed amendment will not cause any prejudice to the opposite party/defendant, if an opportunity to file additional written statement be given to opposite party herein.

In such view of the matter, the order impugned dated 14.5.2015 is hereby set aside. The plaint is amended as per schedule of the amendment petition. The plaintiff is directed to file amended plaint within a period

of three weeks from the date of communication of the order. Learned court below is directed to make every endeavor for expeditious disposal of the suit, since the suit is pending for a considerable period of time and to make best efforts to conclude the entire proceeding of the suit, preferably within a period of ten months from the date of communication of the order, without giving any unnecessary adjournment to either of the parties.

The court below will give liberty to the opposite party/defendant to file additional written statement, if any, within fifteen days from the date of filing the amended plaint by the plaintiff/petitioner.

C.O. 3226 of 2015 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)