

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 3401 of 2022

M/s. Shree Krishna Welding Works

VERSUS

Sri Uma Shankar Singh

For the petitioner:

Mr. Animesh Paul, Adv.

For the opposite party:

Mr. Aniruddha Chatterjee, Adv.

Mr. Rishabh Karnani, Adv.

Mr. Pranav Sharma, Adv.

Mr. Ajit Pandey, Adv.

Judgment on: May 19, 2023

Biswaroop Chowdhury, J:

The petitioner before this Court is a tenant/defendant in a suit for eviction and is aggrieved by the Order dated 09/02/2023 passed by the Learned Civil Judge (Junior Division) 1st Court at Howrah in Title Suit No. 144 of 2010 in allowing prayer of plaintiff/Landlord for amendment of plaint.

The case of the petitioner/defendant may be summed up thus:

1. One Amit Kumar Chamaria and Ashok Kumar Jalan being plaintiffs have filed a suit for recovery of possession and mesne profit being Title Suit No. 144 of 2010 against the petitioner herein in the Court of the Learned Civil Judge (Junior Division) 1st Court at Howrah. Subsequently during pendency of the said suit the said plaintiffs have transferred the suit property in favour of the present opposite party and thereafter the present opposite party was substituted as sole plaintiff in the said suit for recovery of Khas Possession in place of the said original plaintiffs. The said suit was filed only on the ground of default of rent.
2. The petitioner is contesting the said suit by filing its written statement.
3. The plaint of the said suit was amended in the year 2019, upon allowing of an application for amendment under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure 1908 filed by the plaintiff and by the said amendment another ground for eviction being violation of provisions (m), (o) and (p) of Section 108 of Transfer of Property Act was amended in the said suit.
4. In the year 2022 the opposite party has again filed an application for amendment under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure 1908 whereby the opposite party has prayed for amendment of the cause title of the plaint along with related corrections and addition of another alleged ground of Section 2(g) of the West Bengal Premises Tenancy Act 1997. It was averred by the opposite party herein that from the written statement filed by the petitioner herein on

10.03.2011 the opposite party herein came to know that the original tenant died on or before the said date and thus the petitioner's present proprietor has no right to possess suit property.

5. The petitioner submitted its written objection to the said application for amendment filed by the opposite party herein. It was contended by the petitioner that the fact was well known to the opposite party herein since more than 10 years and there has been amendment of the plaint previously in the year 2019. It was further contended that the petitioner company being the tenant, the application of Section 2(g) of the Act of 1997 does not and cannot arise. It was also contended that at the belated stage of suit, addition of a new ground will certainly change the nature and character of the suit and as such it was prayed that the said application for amendment be rejected.
6. By Order dated 05.08.2022 learned Court below was pleased to allow the prayer for amendment on contest.
7. The petitioner being aggrieved by the impugned Order dated 05.08.2022 passed by Learned Court below has come up with the instant application.

It is contended by the petitioner that the Learned Court below failed to consider the scope and ambit of the provisions contained under Order VI Rule 17 of the Code of Civil Procedure 1908. It is further contended that the Learned Court below acted illegally and with material irregularity in failing to consider that the said application for amendment of the plaint having been filed at such

belated stage of the suit and more particularly after a period of 12 years cannot be allowed. It is also contended that the proposed amendment in no way was required for proper and effective adjudication of the suit and the statutory ground of Section 2(g) of West Bengal Premises Tenancy Act 1997 not needed to be amended and the same being a point of law can always be taken at the time of hearing of the suit.

Heard Learned Advocate for the petitioner and Learned Advocate for the opposite party. Perused the petition filed, written notes of arguments, and materials on record.

Learned Advocate for the petitioner submits that allowing the proposed amendment would make a total sea change with regard to the case made out in the plaint of the suit which is impermissible under the law. Learned Advocate further submits that the cause of action of the suit is based on the ejectment notice dated 02.06.2010 sent to the defendant, thereby accepting this defendant as tenant and as such the proposed amendment of the pleading to the effect that the father of this defendant was the tenant and this defendant is a trespasser in view of Section 2(g) of the said Act of 1997, is being mutually destructive, contradictory and inconsistent to each other which is not permissible and amounts to substituting and altering of the cause of suit. Learned Advocate relies upon following two decisions of Hon'ble Supreme Court.

Usha Benashaheb Swami and ors Vs. Kiran Appaso Swaml and ors reported in AIR – 2007. S.C. P. 1663.

Malkiat Singh Vs Kasturbe Gandhi Memorial Trust and ors reported in 2022(3) ICC. 224.

Learned Advocate submits that it is well settled that the amendment in the pleadings by way of adding mutually destructive inconsistent/contradictory pleas/reliefs/claims is not permissible. It is further submitted by the Learned Advocate that the Hon'ble Apex Court in the case of Alkapuri co-operation Housing Society Ltd. Vs. Jayantibhai Naginbhai reported in AIR – 2009 S.C. 1948 have settled that there cannot be any doubt or dispute that an application for amendment of the plaint seeking to introduce a cause of action which had arisen during pendency of the suit stands on a different footing than the one which had arisen prior to the date of institution of the suit and it is impermissible to alter the basic structure of the suit. Learned Advocate also submits that according to the decision of the Hon'ble Supreme Court in the case of Radhika Devi Vs. Bajrangi Singh and Ors reported in AIR – 1996. S.C. P.2358. the amendment of the plaint cannot be allowed in case the same would result in prejudicially affecting the rights of the other party which had accrued to him by lapse of time.

Learned Advocate for the opposite party submits that the plaintiff/opposite party stepped into the shoes of the original plaintiffs upon the suit property being transferred by a registered Deed of conveyance to the opposite party by

former plaintiffs. Pursuant to purchase of suit property the opposite party by way of application under Order 22 Rule 10 of the Code of Civil Procedure got himself substituted in the suit. On 29-06-2022 the opposite party filed an application under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure praying for amendment of the plaint necessitated on account of change in circumstances during pendency of the suit as the original tenant, Krishna Chandra Das was not alive on 10.03.2011 i.e. the date of filing of the written statement which came to the knowledge of the opposite party only after going through the verification and affirmation of the written statement. Learned Advocate submits that it is the specific case of the plaintiff/opposite party that the opposite party has stepped into the shoes of the original plaintiff only in 2021 after purchasing the suit property and therefore there has been no delay on the part of the opposite party in filing the application under Order VI Rule 17. It is settled law that an assignee who inherits the status of the assignor has the right to add to the case made out by the assignor after being assigned the interest of the assignor. Learned Advocate further submits that in terms of the Judgment passed by the Hon'ble Apex Court in Ram Awadh Vs Acchaibar Dubey and Anr. reported in 2000(2) SCC. P - 428. And Kadupugatha Varalokshami Vs Vudugiri Venkata Rao and Ors reported in 2021 SCC online S.C. 365 the substituted plaintiffs being the opposite party herein cannot be estopped from taking statutory point at the instant stage citing delay eventhough the original plaintiffs have not sought to amend the plaint and add the necessary pleadings in respect of Section 2(g) of the West Bengal Premises

Tenancy Act. It is also submitted that it is a settled proposition of Law that there cannot be any estoppel against a statute and the points of law can be raised at any stage of the proceedings and a party cannot be estopped from taking a statutory plea on the ground of delay. Learned Advocate submits that in terms of the decision of Hon'ble Apex Court in the case of Andra Bank Vs. Abn Amro Bank NV and Ors reported in (2007) 6 SCC. 167 at the time of considering prayer for amendment the Court cannot go into the question of merit of such amendment. In the case of Revayettu Builders And Developers Vs. Narayanswamy and sons and others reported in (2009) 10 SCC P-84 the Hon'ble Supreme Court held that the Court while exercising its discretion shall be first satisfied that such amendment is necessary for the determination of the real question in controversy and if the amendment sought to be incorporated does not change the nature and character of the suit/proceedings such amendment should be allowed.

Learned Advocate relies upon the following decision:

Ranjit Singh and Anr Vs. Smt. Sipra Sarkar reported in 2023 (1) ICC. P – 961.

Upon hearing the Learned Advocates and considering the facts of the case this Court is of the view that as the dispute relates to amendment of plaint it is necessary at the very outset to consider the provision of amendment as provided under Order VI Rule 17 of the Code of Civil Procedure.

Order VI Rule – 17 of the Code of Civil Procedure provides as follows:

'The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.'

"Provided that no application for amendment shall be allowed after the trial has commenced 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."

In the instant case although the suit is fixed for P.H. Board but the examination of witness did not commence thus a rigid view may not be taken as the trial has not progressed. The Hon'ble Supreme Court in the case of Gurbaksa Sing Vs. Buta Sing allowed the prayer for amendment on the ground that there was inability of the party to obtain correct particulars well in time i.e. before filing of the suit or commencement of trial and trial had not progressed much only two official witnesses were examined.

In the case of Bhany Prakash V. Munnalal reported in AIR – 1979. MP. P – 157 the Hon'ble Court observed that the law is well settled that though the rights of the parties have normally to be decided on the date of the suit the Court can if the interest of justice require it take notice of the subsequent events and grant appropriate reliefs.

In the case of Rajeshwar Dayal V. Kathari reported in AIR – 1970. Raj. 77 the Hon'ble Court observed that the Court would take notice of the changed

circumstances whereby reason of subsequent fact the original relief claimed has become inappropriate.

It has been held in different judicial pronouncements that when the proposed amendment has the effect of withdrawal of admission in the original pleading, the same should not be allowed.

In the instant case there is no allegation that there is admission of any fact by any party in the pleadings. The plaintiff/opposite party has not proposed to withdraw any admission made in the plaint or petition. The plaintiff/opposite party upon relying on a fact made in the pleadings of the defendant/petitioner which the plaintiff came to know from the petition of the defendant raised a claim on the ground of law which came into operation on the occurrence of a particular event. As there cannot be estoppel on any provision of law the plaintiff/opposite party cannot be precluded from raising the said point of law for adjudication of the case. As per public policy there should be prevention of multiplicity of litigations thus Courts are empowered to take into consideration subsequent event to prevent multiplicity of litigations where consideration of subsequent fact is necessary for proper adjudication of the dispute.

Now the point for consideration is whether the proposed amendment changes the nature of the suit.

At the very outset it is to be remembered that as the suit was instituted under Section 6 of the West Bengal Premises Tenancy Act 1997, whether by proposed amendment jurisdiction of the learned Court below is ousted or not.

The answer is in the negative. As the learned Court below still retains jurisdiction to adjudicate the suit it is also necessary to see as to whether there is any change of the relief claimed. It appears that the suit which was instituted to evict the tenant/defendant by praying decree for eviction there is no alteration in reliefs claimed.

The petitioner/defendant who inherited the tenancy from the original tenant continued to remain in the suit property and contest the suit for eviction. The defendant/petitioner will now be required to contest the suit for eviction on a new ground which has come into existence during the pendency not by act of any party but by operation of law. Thus it cannot be said that there is total change of nature of suit.

Thus upon considering the facts of the case this Court is of the view that there is no error in the order allowing amendment by Learned Trial Court. However, considering the fact that the prayer for amendment was made after the case was fixed at P.H. Board the defendant/petitioner should be compensated by costs.

Hence this Revisional Application stands disposed. Order dated 5/08/2022 passed by Learned Civil Judge Junior Division 1st Court Howrah in T.S. 144 of 2010 stands modified to the extent that the order of amendment shall be carried out upon payment of costs of Rs. 5,000/- (Rupees five thousand) by opposite party to the petitioner. Other contents of the order of Learned Trial Court remain unaltered.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)