

Item No. 2
07.06.2023
Court. No. 19
GB

C.O. 3406 of 2022

Sri Srinath Ghosh
Vs.
Sri somnath Mookerjee

*Mr. Arijit Bardhan,
Mr. Sayan Sinha,
Mr. Adil Naser*

...for the Petitioner.

Ms. Shebatee Datta

...for the Opposite Party.

The defendant in a suit for ejectment is the petitioner before this Court. Aggrieved by an order dated September 26 of 2022 passed by the learned Civil Judge (Junior Division), 7th Court at Howrah in Title Suit No.129 of 2011, the revisional application has been filed.

According to Mr. Bardhan, learned advocate for the petitioner, the order of the learned court below suffers from material irregularity for the following reasons:-

- a) The amendment was taken out belatedly, that is, after trial had commenced.
- b) The nature of the amendment would indicate that contrary pleas had been raised.
- c) The pleadings sought to be incorporated by way of an amendment would amount to taking the suit out of the domain of the West Bengal Premises Tenancy Act.

The learned advocate for the plaintiff denies such contention of Mr. Bardhan and submits that the trial had

commenced before the present plaintiffs were substituted. The original plaintiff was the father of the present plaintiff. After the death of the father his wife and son were substituted. Thereafter, the wife died and the opposite party became the sole plaintiff in the suit.

According to the opposite party, the application for amendment was brought in as the tenant died and the plea that the heirs of the deceased tenant did not have any right to continue with the tenancy, was sought to be incorporated. The learned advocate submits that trial had commenced prior to the death of the respective parties and as such, the contention of Mr. Bardhan that the amendment should not be allowed at this stage, cannot be taken to be correct. It is submitted that death of a party might have consequences in a suit for eviction. The pleadings are necessary for complete adjudication of the dispute and the same would not change the nature and character of the suit. The pleadings have been incorporated only to urge a further point with regard to the interest of the petitioner in the suit property, consequent upon the death of the original tenant.

The learned court below allowed the amendment on the ground that the same was formal in nature and would not change the nature and character of the suit property.

Mr. Bardhan submits that the point of applicability of Section 2(g) of the West Bengal Premises Tenancy Act and the contrary pleadings that the petitioner was a trespasser on the one hand and/or a tenant on the other, render the entire

application for amendment as invalid and the learned court ought to have taken into consideration such contrary pleadings before allowing the amendment.

This Court is of the view that amendment is allowed to effectively adjudicate the lis between the parties and to avoid multiplicity of proceedings. It appears that in the course of the suit the original landlord and the original tenant passed away. Hence, on the death of the tenant some pleadings were sought to be introduced with regard to the tenancy. However, the merits of the amendment or the correctness of the statements made in the amendment application, are not to be looked into at the time of allowing the amendment application. The contentions of Mr. Bardhan with regard to applicability of Section 2(g) of the West Bengal Premises Tenancy Act and the averments as to whether the petitioner was a tenant or a trespasser shall be decided at the trial, on the basis of the evidence and the law applicable.

The Apex Court in the case of ***Andra Bank vs. ABN Amro Bank N.V. and others*** reported in **2007 SC 2511** observed that delay was no ground for refusal of prayer for amendment of a written statement. The only question to be considered by the Court was whether such amendment would be necessary for decision of the real controversy between the parties in the suit and the Court could not go into the question of merits of amendment. The Hon'ble Apex Court in the case of ***Ramchandra Sakharam Mahajan vs. Damodar Trimbak Tanksale (Dead) and***

others reported in **(2007) 6 SCC 737**, held that if the amendment enables the Court to pin-pointedly consider the real dispute between the parties and helps to decide the case more satisfactorily, the amendment ought to be allowed.

In the case of **Raghu Thilak D. John vs. S. Rayappan** reported in **AIR 2011 SC 699**, it was held that amendment should generally be allowed, unless it was shown that permitting the amendment would be unjust and would cause prejudice to the opposite side, which could not be compensated by costs or would deprive him of a right which had accrued to him with the lapse of time. Amendment may also be refused if the same is barred by time.

In the decision of **Rajesh Kumar Aggarwal and others vs. K.K.Modi and others** reported in **AIR 2006 SC 1647**, the Apex Court held on similar lines and directed that the Court was not to go into the merits. The relevant portion is quoted below:-

"While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment."

In the decision of **Life Insurance Corporation of India vs Sanjeev Builders Private Limited & Anr.** decided in **Civil Appeal No. 5909 of 2022**, the Hon'ble Apex Court laid down the principles of governing

amendment in paragraph 70 of the decision. The relevant portion is quoted below:-

(ii) All amendments are to be allowed which are necessary for determining of the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed:-

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided (a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.”

Thus, this Court does not find any irregularity or illegality in the order passed by the learned court below. The plaintiff shall file the amended plaint, if not already filed,

within two weeks from date. An additional written statement shall be filed by the petitioner within four weeks thereafter. The merits of the amendments incorporated in the plaint shall be decided at the final hearing. The parties are also at liberty to seek further opportunity to adduce evidence on the basis of the newly incorporated facts, if required. The learned court below shall take into consideration such prayer of the parties in accordance with law and pass necessary orders. New issues on the basis of the amended plaint shall be framed, if so required.

In view of the fact that the amendment was taken out after almost three years from the death of the original tenant, this Court is of the view that the application for amendment ought to have been allowed upon compensating the tenant by payment of cost. The suit will proceed upon satisfaction of the learned court below of payment of Rs.5,000/- in favour of the petitioner. Such amount shall be tendered in cash to the learned advocate on record for the petitioner in this court, within seven days from date. A receipt shall be given by the learned advocate. Such receipt shall be produced before the learned court below and the suit shall proceed in accordance with law.

Accordingly, the revisional application is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)