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19.9.2023
Ct. 236
SB

C.O. 3418 of 2008

In the matter of : Sri Nigamananda Trust Board represented by its President Sri Muktipada Panda.

1. None appears on behalf of the petitioner.
2. This application under Article 227 of Constitution of India Challenges the Order No. 47 Dated 15.4.2008 passed by the learned Civil Judge, Junior Division, Dantan in T.S. No. 9 of 2002.
3. I do not find any reason to adjourn the matter *suo moto* rather I am inclined to dispose of the application on merit.
4. By the order impugned, learned Trial Court was pleased to allow the petition under Order VI Rule 17 of the Code of Civil Procedure but in part.
5. Aggrieved by the order the plaintiff has filed this application under consideration.
6. Upon perusal of the order impugned, I find that the learned Trial Court was not inclined to allow the application for amendment of plaint in its entirety on the ground that the plaintiff was in the know of the facts that the plaintiff intended to incorporate in the plaint by way of amendment.
7. It was further observed by the learned Trial Court that there was no explanation as to what prevented the plaintiff from bringing those facts in the plaint at the time of filing of the suit.
8. From the order impugned, the stage of the proceeding when the amendment was sought for, cannot be ascertained. True it is proviso to Rule 17 prescribes 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.

9. Without there being any indication that the trial of the suit was commenced at the relevant point of time, I am of the view that the amendment as sought for ought to have been allowed in its entirety when it is observed by learned Trial that the proposed amendment would not change the nature and character of the suit.

10. The order impugned, is thus, modified.

11. The amendment as sought for by the plaintiff is allowed.

12. In absence of any order of stay there is every likelihood that the Title Suit No. 9 of 2002 has been disposed of during this last twenty one years.

13. The plaintiff is directed to comply the order of provision of Order VI Rule 18 of the Code of Civil Procedure and the defendants shall be at liberty to file additional written statement and this process shall have to be completed within eight weeks from the date of receipt of the order, if this suit is still pending.

14. The revisional application is disposed of along with application, if any.

15. Let a copy of the order be sent down to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)