

October 4, 2023
Sl. No.14
Court No.19
s.biswas

CO 3602 of 2022

Madan Mohan Mandal
vs.
Panchu Gopal Sasmol and another

Mr. Tarak Nath Halder

... for the petitioner

Mr. Anshuath Chakraborty

Mr. Gourab Mukhopadhyay

... for the opposite parties

The revisional application arises out of an order dated August 3, 2022 passed by the learned Civil Judge (Junior Division), Bidhannagar, North 24 Parganas, in Ejectment Suit No.2 of 2017.

By the order impugned, the learned trial judge allowed the application for amendment of the plaint. The amendment sought to be incorporated was correction of the dates with regard to cause of action and determination of the tenancy. The suit is for eviction and recovery of khas possession. The suit has been filed under the provision of the West Bengal Premises Tenancy Act, 1997.

Mr. Halder, learned advocate for the petitioner, submits that the order impugned does not disclose any reason as to why at the stage of cross-examination of the PW1, such was allowed.

It is submitted that the nature of the amendment amounted to altering the cause of action, which was not permissible. The plaintiff failed to show before the learned court that despite

due diligence, such fact could not be brought on record before the trial commenced.

Mr. Halder further submits that the notice was the very essence of suit for eviction. If the notice was defective, the suit would fail. Under such circumstances, amendment of the dates with regard to the notice and determination of tenancy amounted to filling up of lacuna. The learned court ought not to have permitted the same.

From Paragraph 12 of the said plaint, it appears that the legal notice for ejectment dated December 17, 2016 was sent by registered post to the defendant/tenant and the defendant/tenant was directed to vacate the suit premises with the expiry of the last day of December, 2016. This appears to be an obvious mistake, as a month's time is required to be given.

Paragraph 15 of the plaint also indicates that 1st day of January, 2017 was incorporated instead of February 2017. The tenancy was determined with effect from last day of January 2017. The notice has been annexed to the plaint. The notice has also been produced before this court.

Paragraph 4 of the notice indicates clearly that the same was issued on December 16, 2016. The tenancy was determined with the expiry of January,

2017 and from February 1, 2017 the tenant would be treated as trespasser.

Under such circumstances, this court does not find any illegality in allowing the amendment as obviously the amendment was in the nature of correction in the plaint. However, due to the delay, cost of Rs.500/- shall be paid by the plaintiff to the tenant. The cost will be paid within 10 days. The suit be expedited without granting unnecessary adjournments. Additional written statement to be filed in court before the commencement of the puja vacation.

The revisional application is thus disposed of.

All the parties are directed to act on the basis of the server copy of the order.

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

(Shampa Sarkar, J.)