

12.09.2023
Court No. 19
Item no.17
CP

C.O. No. 3930 of 2022

Sri Prasanta Sengupta
Vs.
Smt. Rekha Das & ors.

Mr. Tanmoy Mukherjee
Mr. Saikat Sen
Mr. Souvik Das
Mr. Rudranil Das

... for the Petitioner.

The revisional application has been filed challenging an order dated November 14, 2022, passed by the learned Civil Judge (Junior Division), 4th Court at Serampur, Hooghly in Title Suit No. 21 of 2015.

By the order impugned, the learned court below allowed an application for amendment of the plaint.

Mr. Mukherjee, learned advocate for the petitioner, submits that the amendment was unnecessary, repetitive and not relevant for adjudication of the real controversy between the parties. The facts sought to be brought on record by the amendments, were already pleaded in paragraph 11 of the plaint. He submits that the plaintiff was in knowledge of the alleged accommodation/alternative accommodation of the defendant at the time of filing of the suit in 2015. Again a similar fact was sought to be incorporated by an amendment at a belated

stage. The plea was that the certified copy of the alleged deed of gift was obtained sometime in 2018 and upon getting hold of the certified copy, the statements contained in the schedule of amendment were required to be brought on record. Mr. Mukherjee submits that the plea that knowledge of such facts were available only after the certified copy of the deed of gift had been supplied to the plaintiff, was incorrect. He also submits that the application for amendment was highly belated.

Considered paragraph 11 of the plaint. It appears from the averments that the plaintiff had specifically stated that the defendant had his own house at 56/A/4, Mallickpara Bye Lane, Serampore, Hooghly, which was within a distance of 1 km from the suit premises.

Perused the Schedule of Amendment. It appears that the plaintiff wanted to bring on record the fact that the defendant had acquired right, title and interest in respect of a residential property, by a deed of gift being an open roof area on the first floor of Holding No. 56/A/4, Mallickpara Lane, measuring 873 sq. ft. in R.S. Plot Nos. 601 and 602 corresponding to R.S. Khatian No. 194, within Mouza – Mahsh, together with proportionate undivided impartible share of the land underneath the building

and also in respect of all common right of user, i.e., stairs, safety tank, underground water reservoir etc.

Further averments in the schedule of amendment is that the defendant was making a construction on the first floor roof top of the property and the defendant, had sub-let the property to one Sujoy Basu during the pendency of the suit. Statements that the defendant was residing at the gifted property along with his family members which was within 2 kms from the suit property and also 2 kms. from the court premises, were sought to be introduced.

This court finds that the contention in paragraph 11 of the plaint with regard to the defendant having a house at 56/A/4, Mallickpara Bye Lane, was sought to be elaborated, clarified and described with proper facts and figures. The nature of the right of the defendant in respect of the first floor of the premises, the address, the measurement of the open roof and the fact relating to the construction on the open roof and sub-letting, were sought to be incorporated.

It is well-settled that amendment should be liberally allowed, unless the same amounts to withdrawal of any admission made in the plaint or contrary pleas are sought to be introduced.

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 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.”

The suit is at the pre-trial stage. It does not change the nature and character of the suit. The amendment is in the nature of elaboration of the statements already made at paragraph 11 of the plaint and will not cause injustice to the petitioners. The amendment is necessary for proper adjudication of the suit, as details of the defendant's accommodation is sought to be brought on record in a suit for eviction. The truth and correctness of the statements shall be decided at the trial.

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 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."

This court does not find any reason to interfere with the order impugned. The revisional application is dismissed. In the decision of ***Ganesh Prasad vs.***

Rajeshwar Prasad and ors. reported in **2023 SCC OnLine SC 256**, the Hon'ble Apex Court held as follows:-

“37. Thus, the Plaintiffs and Defendant are entitled to amend the plaint, written statement or file an additional written statement. It is, however, subject to an exception that by the proposed amendment, an opposite party should not be subject to injustice and that any admission made in favour of the other party is not but wrong. All amendments of the pleadings should be allowed liberally which are necessary for determination of the real controversies in the suit provided that the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken.”

The petitioner shall file the additional written statement within four weeks from date.

The learned court below shall accept such additional written statement and continue with the suit.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)