

IN THE HIGH COURT AT CALCUTTA
(CIVIL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

C.O. 3880 of 2014

SMT. RATAN KUMARI SURANA
VS.
SRI MOLOY KUMAR BOSE & ANR.

For the Petitioner : Mr. Aniruddha Chatterjee, Adv.
Mr. Dibyendu Chatterjee, Adv.

For the Respondents : Mr. Asit Baran Routh, Adv.
Mr. Anirban Ghosh, Adv.

Hearing concluded on : 25th July, 2023

Judgement on : 28th July, 2023

Siddhartha Roy Chowdhury, J.:

1. This application under Article 227 of the Constitution of India challenges the Order No. 36 dated 19.8.2014 passed by learned Judge, 10th Bench City Civil Court, Calcutta in Title Appeal No. 61 of 2012. By the impugned order, learned Trial Court was pleased to allow the prayer under Order VI Rule 17 of the Code of Civil Procedure to amend the additional written statement to incorporate certain subsequent events in the pleadings.
2. For the sake of convenience the parties will be referred to as they were arrayed before the learned Trial Court.

3. Briefly stated, the petitioner filed a suit for eviction against the opposite parties on the ground of reasonable requirement. The suit was contested by the defendants and learned Trial Court was pleased to pass the decree directing the defendants to quit and vacate the suit property.
4. Aggrieved by and dissatisfied with the judgement, the defendants preferred an appeal being Title Appeal No. 61 of 2012 before the learned Chief Judge, City Civil Court, which was transferred to learned Judge 10th Bench for disposal of the appeal. The appellant filed applications under Order VI Rule 17 with Section 151 of the Code of Civil Procedure. Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure seeking leave to lead additional evidence and also filed another application under Order XXXIX Rule 7 of the Code of Civil Procedure. Learned Appellate Court was pleased to allow the prayer for amendment of additional written statement by the order impugned.
5. Impeaching the order learned counsel for the petitioner Mr. Aniruddha Chatterjee submits that the amendment of additional written statement is nothing but a ploy to drag the litigation and to delay the eviction with a view to harass the plaintiff / petitioner. Facts sought to be incorporated by way of amendment is already on record in the form of pleading.
6. Drawing my attention to the written statement Annexure -'B' precisely to paragraph 12 and averment made in paragraphs 12 and 14 of the additional written statement, it is submitted by Mr. Chatterjee that in their pleadings the defendants narrated that the plaintiff inducted a new tenant in a shop room which was lying vacant and

under the control of the plaintiff, the plaintiff suppressed the fact that she has been possessing several vacant shop rooms and there is better accommodation which is vacant and under the control of the plaintiff in the new building constructed by plaintiff.

7. It is further adverted that during the pendency of the suit the plaintiff inducted some new tenants in the shop. Therefore, the amendment was not necessary for adjudication of the appeal.
8. Drawing my attention to Annexure - 'F' affidavit-in-opposition filed by the plaintiff to the petition under Order VI Rule 17 of the Code of Civil Procedure, precisely the paragraphs 16 and 17, Mr. Chatterjee, submits that the plaintiff has admitted the fact that Motilal Shaw surrendered the tenancy and the rooms were let to Subhash Engineering Company and Tarlochan Singh. There was no tenant under the plaintiff known as Parashmal Surana.
9. The plaintiff further admitted to have inducted Sri Narendra Kedia upon surrender on tenancy of Navratanmal Baid. The plaintiff admitted that the alleged multistoried building referred to therein is an incomplete building without electricity. One Sitaram Saraf was a tenant who surrendered the tenancy to facilitate the construction.
10. It is adverted by Mr. Chatterjee that pleadings already on record contain everything what the defendants / appellants wanted to incorporate by way of an amendment. There was no reason for learned First Appellate Court to allow the prayer for amendment. The order impugned is cryptic and it does not reflect the reason that necessitated the learned Appellate Court to allow the prayer for amendment. The judicial order bereft of reasoning merits rejection.

11. Refuting such contention of Mr. Chatterjee, Mr. Routh, submits that suit was decreed only on the ground of reasonable requirement and during pendency of the appeal certain incident took place. The defendant / tenant intends to incorporate those facts in the pleading by way of an amendment for the simple reason that without the foundation made in the pleading the defendant shall not be allowed to lead evidence to prove the subsequent events. It will not cause any prejudice to the parties.
12. I have perused the material on record. True the plaintiff / petitioner in his written objection to the petition under Order VI Rule 17 of the Code of Civil Procedure has admitted the factum of surrender of tenancy and delivery of possession of the shop room by one Motilal Shaw, Parashmal Surana, Navratanmal Baid. The landlady also admitted that Navratanmal Baid was a tenant and upon surrender of the tenancy by Navratanmal Baid, Narendra Kedia has been inducted as tenant. Therefore, the amendment sought for appears to be a repetition of what has been pleaded by the defendant / appellant. Only the fact that on first day of May, 2014 the landlady inducted one tenant upon surrendering of possession of Navratanmal Baid who runs a business in the suit under the style 'Radhica Solution' is a fact which has not been pleaded. So far the construction of building and induction of tenant in the new building is concerned that also stands admitted.
13. But such averments made in the affidavit-in-opposition will not permit the defendant / opposite parties to lead evidence. There has to have a foundation to lead additional evidence either oral or

documentary. There will be no room to confront the plaintiff with the statement so made, as well.

14. Though the order is cryptic but upon compliance of Order VI Rule 18 of Code of Civil Procedure, the plaintiff shall get to know the pleadings after amendment and may exercise the right to submit rejoinder to plaint, if necessary. But this amendment shall not lead to any order under Rule 23A or 25 of Order 41 of Code of Civil Procedure Code. Learned Appellate Court shall have to adjudicate the appeal on merit.
15. While considering an application under Article 227 of the Constitution of India, I do not consider it apt to look into the correctness of the order or interfere with the impugned order unless it is perverted or there is manifestation of jurisdictional error. The order impugned is free from jurisdictional error and cannot be said to be perverse.
16. The revisional application merits no further consideration and is thus disposed of, however, without any order as to costs.
17. Let a copy of the order along with lower court record be sent to the learned Trial Court for information and necessary action.
18. Urgent photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)