

Item No. 4
27.02.2024
Court. No. 19
GB

C.O. 54 of 2023

Sri Rabin Mondal & Ors.
Vs.
Sri Kanjilal Santra & Ors.

Mr. Dhiman Ray,
Mr. Firojuddin Islam,
Mr. Dilip Chanda

...for the Petitioners.

Mr. Sandip Das,
Mr. Sounak Bhattacharya,
Mr. Debanjan Das

...for the Opposite Party Nos.1 to 3.

1. The revisional application arises out of an order dated February 17, 2020, passed by the learned Civil Judge (Junior Division), 2nd Court at Diamond Harbour in Title Suit No.314 of 2015.
2. By the said order, the learned court allowed an application for amendment of the additional written statement on the ground that the amendment sought to be incorporated was only formal in nature and in the nature of insertion of additional facts which were not absolutely new. Such facts revolved around the documents that were already mentioned in the defence case. The sale deed of 1945 relied upon by the petitioners, was denied by the defendants.
3. The learned advocate for the plaintiffs/petitioners submits that in paragraph 3 of the additional written statement, the defendants had stated that the deed of 1945 was nothing but a loan transaction and that was why the said deed was not being produced. The said

paragraph was sought to be deleted by incorporating the schedule of amendment. In the schedule of amendment, the defendants introduced a new case that no such deed of sale had been executed between Dhananjay Mondal and Sarat Chandra Mondal, that is, the predecessor of the plaintiffs.

4. Further incorporation of the facts relating to execution of a sale of 1953 was sought to be brought on record by way of the amendment and a statement was sought to be introduced that Dhananjay Mondal executed the deed in 1953 in favour of some other purchasers and he had affixed his signature, which meant that Dhananjay Mondal was a literate person and could sign. Thus, the LTI of Dhananjay Mondal in 1945 was disputable. In the schedule of amendment, further averment was that the deed of 1945 was a product of fraud.
5. The learned advocate for the petitioners submits that the schedule of amendment contained completely contradictory pleadings to what had been stated in the additional written statement. Such inconsistent and self-destructive plea could not be allowed to be taken in the written statement, especially when the trial had commenced.
6. Mr. Bhattacharya, learned advocate for the defendants submits that the foundation with regard to the fact that no such deed of sale had been executed in 1945, has been stated in the written statement. A further elaboration was sought to be made by incorporating the facts which are a

part of the schedule of amendment. Paragraph 9 of Page 52 of the revisional application, which is the written statement, indicates that the defendants had already stated that no deed was executed on April 13, 1945 between Dhananjay Mondal and Sarat Chandra Mondal. Dhananjay Mondal had never executed any such deed in favour of Sarat and the deed of 1945 was false and fabricated and just a paper transaction which had no value in the eye of law. On the basis of such deed, Sarat Chandra Mondal did not acquire any right, title and interest in respect of the suit property.

7. Thus, this Court finds that the contentions of the petitioners/plaintiffs that the defendants were raising a self-destructive plea in the amendment, is not correct. The written statement clearly indicates the defence case. There is an averment that no such deed of 1945 had been executed between Dhananjay Mondal and Sarat Chandra Mondal. It was further stated that if any deed of such nature had been executed, the same was a mere paper transaction and a product of fraud and misrepresentation. By the amendment, a further elaboration was sought to be made upon deletion of the paragraph 3 of the additional written statement. The defendants further stated that upon enquiry, the defendants came to learn that such transaction did not take place. In support of the contention that the LTI was not of Dhanajay Mondal in the deed of 1945, the deed of 1953 was sought to be introduced. The pleading that

Dhananjay Mondal was an educated person and he used to sign, was made to show that it was unlikely that Dhananjay Modnal would affix his LTI in the deed of 1945. Thus the defence case was further explained.

8. In my opinion, such amendment is only a further clarification or an elaboration of what had already been stated in the written statement. Although in a written statement inconsistent pleas and alternative pleas are permissible, in my opinion, the facts sought to be introduced by the amendment were further elaboration and explanation of the defence case and not a self-destructive plea. The plea of loan transaction in the additional written statement was sought to be deleted as the defence case in the written statement was that there was no such conveyance of 1945. The merits of the amendment are not required to be looked into. The facts will be proved in the suit. The right of cross-examination remains. The plaintiff can also file a replica to the amended additional written statement.
9. Under such circumstances, the revisional application is dismissed. The learned court had rightly allowed the amendment.
10. However, as the amendment was sought for at the stage of cross-examination of P.W.1, cost of Rs.15,000/- shall be paid by the defendants to the plaintiffs within a period of three weeks. The learned court shall accept the amended additional written statement on the basis of the amendment which has been allowed by the order

impugned and allow the defendants to rely on the same, only if the cost as directed hereinabove is paid within three weeks from the date.

11. In case of default, the amended additional written statement which will not be accepted.
12. A copy of the amended additional written statement if accepted by the court shall be served upon the plaintiffs and the plaintiffs shall be entitled to file a replica to the same. P.W.1 will be entitled to file a supplementary affidavit-in-chief and be recalled to adduce further evidence.
13. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)