

05.03.2024
Sl. No.13(DL)
srm

C.O. No. 68 of 2024
Smt. Susmita Ghosh
Versus
Sri Ram Prakash Khem & Ors.

Mr. Saumayen Datta,
Mr. Aniket Mitra

...for the Petitioner.

Mr. Rachit Lakshmani,
Mr. Dipankar Halder

...for the Opposite Parties.

1. The revisional application arises out of an order dated August 8, 2023 passed by the learned Additional District Judge, 7th Court, Alipore, in Ejectment Suit No.14 of 2016.
2. By the order impugned, the learned appellate court rejected an application dated September 26, 2022 filed by the petitioner. By the said application, the petitioner prayed for recall of orders dated March 2, 2019, December 23, 2019 and May 21, 2022. Further prayer was for rejection of the additional evidence allowed to be tendered by the learned appellate court. The petitioner is the defendant No.2 in the suit and the appellant in the Ejectment Appeal No.14 of 2016. The plaintiffs/respondents in the appeal, filed their written

objection to the said application, *inter alia*, contending that the Ejectment suit was decreed by the judgment and decree passed by the learned Civil Judge (Junior Division), 2nd Court at Alipore. The application was liable to be rejected as the orders sought to be recalled, had attained finality.

3. Let me consider the orders sought to be recalled. By order dated March 2, 2019, amendment of the plaint was allowed by the learned court, but inadvertently instead of plaint, the expression 'written statement' had gone down in the order. Although, the body of the order indicates that the learned court essentially allowed the plaintiffs to amend the plaint.
4. By an order dated June 24, 2019, the mistake was corrected and instead of 'written statement', the expression 'plaint' was incorporated in the order. The learned court fixed a date for filing of the amended plaint and the petitioner/defendant was allowed to file an additional written statement. It is informed that the amended plaint and the additional written statement were all filed before the learned appellate court, as per the direction.

5. By order dated December 23, 2019 , the learned Advocates for both parties requested the court to record additional evidence in view of the amendments which were carried out and also in view of the additional written statement, which was filed by the petitioner. Such prayer was allowed.
6. Thereafter, the application for recall was filed. The said application for recall was filed on September 26, 2022, i.e. three years after the amendment and the consent order for recording additional evidence of the parties, was allowed by the learned court. The learned court took into consideration the provisions of law and the decisions of the Hon'ble Apex Court and arrived at the conclusion that the amendments allowed were relevant for the adjudication of the appeal. The additional evidence was required for pronouncing judgment on all points raised in the plaint and the additional written statement.
7. In any event, allowing an application to adduce additional evidence, would not itself mean that the court had accepted each and every statement that is being adduced as evidence. It was for the court to

decide the probative value of the evidence at the final hearing of the appeal.

8. The court had particularly recorded that the order allowing additional evidence was passed on consent, as the parties requested that evidence should be recorded in the appeal to enable the parties to prove the subsequent statements which were brought in by the amended plaint as also by the additional written statement. I do not find any illegality in the order impugned.
9. An order can be recalled by a competent court only in the following situations:
 - (a) If the order lacks inherent jurisdiction
 - (b) If any party fails to appear in the proceeding due to unavoidable reasons.
 - (c) If the order is obtained by fraud or collusion or if there is a serious error apparent on the face of it, which goes to the very root of the case.
10. In the facts and circumstances of this case, these ingredients are not present.
11. Accordingly, the revisional application is dismissed.
12. There shall be no order as to costs.

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

(Shampa Sarkar, J.)