

22.05.2024
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Ct. no. 652
sb

CO 300 of 2020

**Najrul Khan
Vs.
Mastura Bibi & Anr.**

Mr. Sujit Sankar Koley
Mr. Swagatam Deb ...for the Petitioner

Mr. Malay Bhattacharya
Mr. Subhrajyoti Ghosh
...for the Opposite parties

Supplementary affidavit filed by the petitioner
is taken on record.

The present application has been directed
against the order dated 18th September, 2019 passed
by the learned Civil Judge (Junior Division),
Bishnupur in Title suit no. 8 of 2012.

In the said suit, the petitioner herein has filed
an application for amendment of the written
statement. Learned Trial Court rejected the
defendant's said prayer for amendment on the ground
that issues have already been framed and the trial
has commenced but the defendant has failed to show
that in spite of due diligence, he could not incorporate
such fact in the pleading earlier before
commencement of trial.

Being aggrieved by that order, Mr. Koley,
learned counsel for the petitioner submits that the

Trial Court acted with material irregularity and passed the order impugned mechanically without applying his judicial mind. Learned court below failed to appreciate true spirit of the Order VI rule 17 of the Code and he also failed to appreciate that the proposed amendment is very much necessary for adjudicating the real controversy between the parties. The court below ought not to have adopted hyper technical approach while dealing with the said application and ought to have held that the defendants were all along diligent in dealing with the case and as such, the prayer for amendment ought to have been allowed.

Mr. Bhattacharya, learned counsel for the opposite parties raised strong objection contending that the statement sought to be incorporated by way of amendment, were all along known to the defendant but they have not explained as to what prevented them from filing those documents before commencement of trial. Accordingly, the court below was justified in rejecting the prayer for amendment in view of the proviso to Order VI rule 17 of the Code and as such, the order impugned does not call for interference.

I have gone through the order impugned and the schedule of amendment. It is true that the prayer for amendment by the defendant/petitioner was made

at a belated stage. On perusal of the schedule of amendment, it appears that by way of amendment, the defendants basically sought to incorporate the fact that the original deed is lying with the Bank as he has taken loan from the Bank. However, he retains one copy of the said deed and the other fact, he wants to incorporate, is about information of recording defendant's name in the LR record of rights.

The court ordinarily should allow the prayer for amendment of pleading unless it is found that petitioner/defendant is acting *malafide* or such amendment likely to cause such injury to the plaintiff, which could not be compensated by cost.

From the submissions made by the parties it appears that the trial just commenced and in fact it is at very initial stage, though issues have already been framed and therefore, there is no likelihood of any injustice or prejudice being caused to the plaintiff if written statement is amended. On the other hand, if the proposed amendment is not allowed, it is likely to create hindrance to the court for effective and conclusive adjudication of the issues involved in the suit.

In such view of the matter, the order impugned dated 18th September, 2019 passed in Title Suit no. 8 of 2012 is hereby set aside, on condition that the defendant will pay the cost of Rs. 1,000/- to the

plaintiff/opposite party within a period of four weeks from the date of communication of the order. On such payment of cost, the written statement shall be amended in terms of the schedule of amendment petition and the defendant will file amended written statement before the court below within a period of three weeks thereafter. The plaintiff/opposite party will be at liberty to recall his witness for examination and cross-examination.

It also appears that the suit is pending for a long time since 2012. In such view of the matter, the court below is requested to make every endeavour for expeditious disposal of the suit and to make his best effort to conclude the entire proceeding preferably within a period of six months from the date of the order without granting any unnecessary adjournment to either of the parties.

Be it also mentioned that if the defendant failed to pay the cost to the plaintiff/opposite party within the aforesaid period, the order impugned shall revive.

C.O. 300 of 2020 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)