03.01.2024
Court No. 19

C.O. 688 of 2022

Maniklal Patra
Versus
Aswini Kumar Patra

Mr. Ganesh Shrivastava,
Mr. Sukanta Das
...for the Petitioner.

Mr. Rabindra Nath Mahata,
Mr. Aritra Shankar Ray
...for the Opposite Party.

1. The revisional application arises out of an order dated March 3, 2022 passed by the learned Civil Judge (Senior Division) 1st Court, Paschim Medinipur (in-charge) in Other Suit no.103 of 2017.

2. By the order impugned, the learned court allowed an application for amendment of the plaint, upon payment of cost of Rs.2000/-. The learned trial court was of the view that wide discretion was allowed to the courts while deciding applications for amendment of pleadings. Amendments should be allowed liberally. Although such power had to be exercised judiciously and with care, nonetheless, the court should not refuse bona fide, legitimate, honest and necessary amendments. Reference was made to

several decisions of the Hon'ble Apex Court on the point.

3. O.S No.103 of 2017 was filed for a declaration of the plaintiff's share in the partnership firm/business and for accounts. The plaintiff prayed for declaration of shares in the business, accounts, appointment of an accounting commissioner, costs and other reliefs. The business in respect of which such suit was filed was named and styled as M/s Mohanpur Foreign Liquor Shop bearing license no.178-58/2005-06.

4. As per the plaint case, the plaintiff and the defendant were cousins. The defendant obtained a liquour license from the West Bengal Government in the name and style as M/s Mohanpur Foreign Liquor Shop, in Khurdhaha Bazar. As the defendant was finding it difficult to run the business on his own, due to scarcity of funds, the defendant started looking for investors. Subsequently, the plaintiff offered to make the investment in the defendant's business. Thus, a partnership was constituted between them, vide a partnership deed dated April 10, 2007. The terms and conditions of the partnership deed had been elaborately stated in the plaint. Thereafter, certain loans were also taken from the United Bank of India, in the name of the plaintiff in respect of the said partnership business. The

plaintiff tendered money on several occasions in support of such business and towards the loan. Although, the plaintiff had financially contributed towards the business, the defendant failed to render proper accounts and violated the terms and conditions of the partnership deed. The plaintiff trusted the defendant and went on paying the money. When the plaintiff found that the defendant was intentionally withholding information with regard to the accounts and the business, the plaintiff issued notice through his learned Advocate to the defendant. Despite having received such letter, no steps were taken by the defendant to disclose the accounts and the condition of the business, to the plaintiff. Neither did the defendant abide by the terms and conditions of the partnership deed, nor did the defendant supply any information regarding the business, to the plaintiff. Thereafter, the plaintiff requested the defendant for his share in the proceeds of the business, which the defendant denied. Under such circumstances, finding no other alternative, the suit was filed for partition of the business and accounts.

5. By way of an amendment application, the plaintiff wanted to incorporate certain additional facts to the effect that after the institution of the suit being no. O.S No.103 of 2017, the defendant

requested the plaintiff to enter into a fresh deed of partnership in respect of the said business. Thereafter, both the parties executed a new partnership deed with certain other terms and conditions. The deed was registered. According to the newly registered partnership deed, 50% of the share of the plaintiff in the said partnership business was reduced to 45% and the money invested by the plaintiff in respect of the said business, was payable to the plaintiff in three equal instalments. The investments of the plaintiff were mentioned specifically in the said partnership deed. Again, the defendant failed and neglected to honour the terms and conditions of the subsequent deed and denied access to the accounts. The legitimate right of the plaintiff to get a complete picture with regard to the accounts of the business, as one of the partners was denied. A further prayer for dissolution of the partnership firm was also sought to be incorporated by the plaintiff, along with a prayer for appointment of a Receiver in respect of the business.

6. Mr. Ganesh Srivastava, learned advocate for the defendant/petitioner, submits that the original suit was filed for accounts and partition. Thereafter, by the amendment, incorporation of further prayers for dissolution of the partnership firm and appointment of a receiver were sought for. The

subsequent deed of partnership and the terms and conditions thereof, were not a part of the original suit. Hence, the said amendment application should not be allowed. Learned advocate further submits that the amendment has resulted in changing the nature and character of the suit and also has expanded the scope of the present suit.

7. Reliance is placed on the decision of the Apex Court in the matter of ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another*** reported in **AIR 2022 SC 4256**.

8. In my opinion, the learned trial court did not err in allowing the application for amendment. It is an admitted position that there was a partnership business in the name and style of M/s Mohanpur Foreign Liquor Shop. That the plaintiff had invested money in the said business over a period of time. That the plaintiff had requested the defendant for accounts, which was not rendered by the defendant. Finding no other alternative, the plaintiff filed the suit and prayed for declaration of his share in the said business and for accounts.

9. During the pendency of suit, the parties entered into another partnership agreement, where the original share of the plaintiff was reduced to 45% from 50%. The money that was invested by the plaintiff in the said partnership business for a period

of time had been quantified with the dates of payment. It was further averred, that despite the second partnership deed, which was entered into at the behest of the defendant, the defendant continued to disobey the terms and conditions and refused to render accounts. The plaintiff filed the amendment application with a further prayer for dissolution of partnership business and appointment of a receiver. The prayer for dissolution of partnership business was sought to be incorporated later, on the plea that even after the second partnership deed was entered into by the parties, the defendant disobeyed the same and the plaintiff had no other way of recovering the money. As the defendant forcefully ousted the plaintiff from the shop room and tried to grab the entire business for his own personal gain, the plaintiff had no other alternative, but to pray for dissolution of the partnership business as well. These were all subsequent events and the plaintiff intended the pending suit to be a composite suit. Adding further pleadings relating to the factual developments during the pendency of the suit and adding connected prayers, does not change the nature and character of the suit.

10. The learned court below correctly allowed such amendment. Firstly, the plaintiff wanted to incorporate subsequent events. Secondly, when a

suit for declaration of share in the partnership business and accounts was already pending, an additional prayer for dissolution, in view of the subsequent events and the conduct of defendant in violating the the terms and conditions of the partnership deed, were required to be brought on record. Incorporation of such facts and subsequent events, were not beyond the nature and scope of the suit.

11. The averments in the amendment application were interlinked and interconnected with the suit. Moreover, a subsequent suit for dissolution of partnership business and appointment of a receiver is always maintainable. Thus, incorporation of the facts by way of amendment in the plaint of the present suit, will avoid multiplicity of proceeding.

12. This is not a case where the plaintiff wanted to either withdraw any admission or introduce contrary pleas. The pleas in the amendment application are consistent with the pleas in the suit, inasmuch as, even after the subsequent partnership deed was entered into between the parties, it is alleged that the defendant continued to withhold the accounts of the business, refused to acknowledge the investments of the plaintiff and also the plaintiff's share in the business. Thus, the subsequent amendment does not change the nature and character of the present suit.

13. The contention of the petitioner that the suit is not maintainable as the agreement of 2007 did not have any existence in the eye of law, due to the subsequent agreement, shall be decided at the time of trial, on framing of issues and upon recording evidence.

14. Not allowing the amendment would amount to delegating the parties to a separate suit which has been avoided, by allowing the amendment. In the matter of ***Life Insurance Corporation of India(Supra),*** the Hon'ble Apex Court laid down the principles governing amendment, in paragraph 70 of the decision. The relevant portion is quoted below:-

> (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).

15. The amendment is necessary for proper and complete adjudication of the dispute between the parties.

16. The contention of Mr. Ganesh Srivastava, learned advocate for the petitioner, is a hyper-

technical objection, which cannot be accepted. Technicalities of law should not be permitted to cause injustice to the parties.

17. The correctness of the averments sought to be introduced by way of amendment and/or the merits of the same, are not to be adjudicated at the time of allowing such application.

18. 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."

19. In the matter of ***Ganesh Prasad vs. Rajeshwar Prasad and ors.*** reported in ***2023 SCC OnLine SC 256*** it has been held that amendment should be allowed liberally.

20. Moreover, the defendant has adequate opportunity to counter such contentions, by filing additional written statement. The suit for accounts and declaration of share in the partnership business

will now become a composite in which suit, dissolution of the parternship has also been prayer for. Essence and the fabric of the suit remains the same. The disputes between the parties were already in existence since long. Additionally, the plaintiff prayed for dissolution of the partnership firm and appointment of a receiver, which, in my opinion, does not amount to changing the nature and character of the suit.

21. As a general rule, amendment should be allowed, unless the same amounts to withdrawal of admission, setting up of inconsistent pleas or the relief claimed is barred by limitation. Owing to the delay, cost has been imposed.

22. Hence, the court below did not commit any error. Time to file additional written statement is extended by four weeks from date.

23. The revisional application is hereby dismissed.

24. There will be no order as to costs.

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

(Shampa Sarkar, J.)