

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

**C.O. 1674 of 2022
Sri Soumen Chowdhury
Vs.
Sri Joydeb Kundu**

For the petitioner :Mr. Kushal Chatterjee, Adv.
Mr. Debrup Choudhury, Adv.

For the Opposite Party :Mr. Bhudeb Chatterjee, Adv.

Heard On :03.07.2024, 04.07.2024

Judgment On : 19.07.2024

Bibhas Ranjan De, J. :

1. The instant civil revision application has been preferred by the petitioner under Article 227 of the Constitution of India with a prayer for setting aside of the order being no. 169 dated

26.04.2022 passed by Learned Civil Judge, Junior Division, 2nd Court, Howrah in connection with Title Suit No. 218 of 2012.

Brief facts:-

2. The petitioner as Plaintiff filed a suit for eviction and mesne profits against the opposite party herein before the Court of Learned Civil Judge, Junior Division, 2nd Court, Howrah which was registered as Title Suit No. 218 of 2012. In the said suit, the opposite party herein appeared as Defendant and filed written statement. After commencement of trial, the petitioner filed an application under Order 6 rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (for short CPC) before the Learned Civil Judge, Junior Division, 2nd Court at Howrah to the amended plaint to bring on record the total description and nature of Holding No. 16/1, Gopal Lal Chowdhury Lane and Holding No. 16/1/1, Gopal Lal Chowdhury Lane. The opposite party as defendant filed a written objection to the said application under Order 6 Rule 17 read with Section 151 of the CPC. Both the parties were examined-in-chief and cross-examined and it was concluded. On 26.04.2022, the Learned

Civil Judge, Junior Division, 2nd Court, Howrah vide Order no. 169 dated 26.04.2022 was pleased to dismiss the petition under Order 6 Rule 17 on contest filed by the petitioner for amendment of plaint.

3. Being aggrieved by and dissatisfied with the said order of dismissal the petitioner has preferred this revision application.

Argument advanced:-

4. Ld. Counsel, Mr. Kushal Chatterjee, appearing on behalf of the petitioner has stated that at the time of argument of the instant suit it first came to the notice of the petitioner that due to inadvertence as well as bona fide mistake on the part of the plaintiff some important facts were omitted which was to be incorporated in the plaint by way of amendment.
5. Mr. Chatterjee further submitted that there is no lawful latches or negligence on the part of the plaintiff and the proposed amendment by no means will change the nature and character of the suit and no new facts were brought by the amendment petition. So the Ld. Trial Judge has erred in dismissing the application under Order 6 Rule 17 of CPC made by the petitioner.

6. In support of his contention, Mr. Chatterjee has relied on a couple of cases which are:-

- ***Abdul Rehman and another vs. Mohd. Ruldu and others reported in (2012) 11 Supreme Court Cases 341***
- ***Smt. Bedana Devi & Ors. vs. Abdul Jawad reported in reported in 1986 SCC Online Cal 105***

7. Per contra, Ld. Counsel, Mr. Bhudeb Chatterjee, appearing on behalf of the opposite party/defendant has contended that the amended petition is liable to be rejected in limine as because according to the proviso of Order 6 Rule 17 of CPC, no application for amendment shall be allowed after the trial has commenced.

8. Ld. Counsel, appearing on behalf of the opposite party has further submitted that it is not a case that the plaintiff could not have raised the matter before commencement of trial despite of due diligence. For a matter of fact, the plaintiff seeks for amendment after the suit is in argument stage. Therefore, plaintiff is trying to fill up the lacuna of the instant suit through his amendment petition. So, He has duly supported

the impugned order passed by the Ld. Trial Judge in dismissing the amendment petition.

9. In support of his contention, Mr. Chatterjee has relied on a case of ***Chappidi Satyanarayanamma vs. Chappidi Dhanalakshmi*** reported in ***ICC-2015-4-87***.

Discussion of the judgements cited by the parties:-

10. In ***Abdul Rehman*** (supra) the Hon'ble Apex Court has held that - the object of the rule is that courts should try the merits of the case that come before them and should consequently allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice.

11. In ***Bedana Devi*** (supra) the Division Bench of this Court has observed that in a suit for eviction on the ground of the amended provisions of the Act, wherein one of the conditions of the ground of eviction is that the owner/plaintiff/landlord is

not in possession of any reasonably suitable alternate accommodation. The plaintiff must plead and prove such condition in order to get a decree of eviction. In such a case, the Trial Court in the interest of justice and proper adjudication of the suit should allow the petition for amendment.

12. In ***Chappidi Satyanarayanaamma*** (supra) Andhra Pradesh High Court has opined that there should be a stage for amending the pleadings. Pleadings cannot be amended after the defence counsel has completed his arguments. If the pleading are now allowed to be amended by one party, the opposite party will have to reframe its defence. It will have to lead evidence afresh and this is one kind of tactics to keep the issue pending rather than allow the same to be decided.

13. Main issues for determination:-

13.1. Whether amendment petition can be entertained by the Court after conclusion of argument stage.

13.2. Whether proposed amendment petition preferred by the petitioner is required for just decision of the lis.

Analysis:-

- 14.** Before delving into the nuances of the case at hand, I think it would be profitable to refer Order 6 Rule 17 of the CPC which runs as follows:-

“17. Amendment of pleadings – The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

- 15.** Therefore, it is apparent that intention of the legislature was to provide ample opportunity to the parties in a civil suit to amend their pleadings at any stage of trial for the purpose of determining the real question in controversy between the parties. Thereafter, a rider was added in the proviso restraining the parties to the suit to avail the opportunity after commencement of trial unless the party claiming amendment shows the reason of failure to avail the opportunity prior to commencement of trial in spite of his due diligence.

Amendment of pleadings, in my humble view, should be considered only for the purpose of determining real question of controversy in the suit irrespective of stage of trial otherwise multiplicity of proceedings will be the only consequence.

16. Ld. Judge, in the order impugned, emphasized on the stage of trial when a prayer for amendment cannot be entertained in terms of proviso to Order 6 Rule 17 of the CPC.

17. Ld. Judge, in the order challenged, noted that the proposed amendment will change the nature and character of the suit and cause prejudice to the defendant/opposite party herein, culminating to de novo trial.

18. I am sorry to subscribe to that view of the Ld. Trial Judge as in the instant case the real question in controversy between the parties pertains to a dispute between the landlord and tenant with regard to eviction.

19. According to the specific provisions of the West Bengal Premises Tenancy Act, 1997 the plaintiff has to prove that he has reasonable requirement of the subject premises for his own occupation and he is not in position of any alternative suitable accommodation.

20. This material facts have to be taken into account by the Court in order to adjudicate the dispute relating to eviction and secure the ends of justice. In the case at hand, the plaintiff herein has admitted that he has an alternate accommodation only after commencement of trial that too after completion of arguments. But, whether the alternate accommodation will serve the purpose of the petitioner for which he has preferred the eviction suit can only be assessed after giving opportunity to him to adduce supporting evidence.

21. Now coming to the issue regarding the amendment petition changing the nature and character of the suit, in my humble opinion, does not have any basis. As the main contentious dispute regarding the instant suit is deeply interlinked with the issue that is proposed to be raised by the petitioner through amendment.

22. Now coming to the stage on which the amendment petition has been proposed to be filed by the petitioner/plaintiff, that argument raised by the Ld. Counsel, appearing on behalf of the defendant with regard to the proviso to Order 6 Rule 17 of the CPC wherein it is stated that no

application for amendment shall be allowed after commencement of trial unless the Court is of the firm opinion that in spite of due diligence the party could not have raised the matter before the commencement of trial, in my opinion, is not applicable in connection with the case at hand as per as the factual matrix of this case goes.

23. In *Abdul Rahaman* (supra) Hon'ble Apex Court has categorically emphasized on the point that all the amendments that may be necessary for determining the real question in controversy can be allowed as **the power to allow amendment is wide and can be exercised at any stage of the proceeding in the interest of justice.**

24. The Hon'ble Apex Court in a catena of decisions has reiterated that all the amendments which are necessary for purpose of determining the real questions in controversy between the parties should be allowed if it does not change the nature of the suit.

25. In the light of the aforesaid discussion, I am of the view that the allowance of amendment petition in no way shall prejudice the opposite party/defendant herein as they are free

to file additional written statement if desired. Accordingly, the impugned order passed by the Ld. Trial Court is hereby set aside. The proposed amendment petition preferred by the plaintiff be made a part of the plaint. Liberty is hereby given to the defendant to file additional written statement if desired.

26. As a sequel, civil revision application being no. 1674 of 2022 stands allowed.

27. Ld. Trial Court is directed to dispose of the same within a period of 2 (Two) months from the date of communication of this Order.

28. Interim order, if there be any, stands vacated.

29. All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.

30. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]