

February 13, 2024
Sl. No.48
Court No.19
s.biswas

CO 1860 of 2023

Amalesh Nanda and others
vs.
Santosh Kumar Rana

Mr. Shibaji Kumar Das

... for the petitioners

Mr. Shamik Chatterjee
Mr. Aditya Bikram Mahata
Mr. Sahil Kabir

... for the opposite party

The order impugned dated May 20, 2023, passed by the learned Additional District Judge, Fast Track 1st Court, Contai, Purba Midnapore in O.A. No.7 of 2016, is the subject matter of challenge in this revisional application.

It is contended by the petitioners that by an amendment application, a time barred claim was sought to be introduced.

The learned advocate for the opposite party submits that as the appeal was directed to be heard afresh, the plaint could be amended for introduction of some important facts and reliefs. Such amendment was not barred in view of the fact that the learned court of appeal below would be required to decide all the issues involved in the appeal and the amendment was taken out for proper and effective adjudication of the dispute between the parties.

The learned advocate for the petitioners submits that the amendments were time barred and such belated amendments were sought to be introduced in the year 2022 for cancellation of sale deeds Nos. 3150 of 1996 and 3149 of 1996. The plaintiff was aware of such deeds long time ago. Such time barred claim cannot be included by an amendment, at any stage of proceeding.

By the order impugned, the learned court has allowed the amendment only by recording that the amendment did not change the nature and character of the suit. The specific objection of the petitioner that the amendments were barred by the laws of limitation, had not been considered by the learned court below.

Accordingly, the order impugned is set aside. The matter is remanded to the learned trial court for a fresh decision on the application under Order 6 Rule 17 of the Code of Civil Procedure filed by the plaintiff. Such decision shall be rendered afresh, with reasons, upon considering the specific objections of the petitioner.

It is settled law that amendment of a time barred claim cannot be allowed, if the amendment appears to be ex facie barred by the laws of limitation.

This court is not inclined to go into the merits of the contentions of either of the parties. The learned court shall dispose of the said application by applying the settled principles of law relating to the issue involved. The matter shall be disposed of by the learned court below, within a period of two months from the next date fixed.

The revisional application is disposed of accordingly.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)