

January 31, 2024
Sl. No.23
Court No.19
s.biswas

CO 2185 of 2023

Mrs. Karuna Shasmal and another
vs.
Surya Santra

Mr. Kaustav Chandra Das

... for the petitioner

1. It appears that on the last occasion as well, none appeared on behalf of the opposite party. On December 20, 2023, none appeared on behalf of the opposite party. As there was some confusion with regard to the postal delivery receipt, fresh service was directed.

2. Affidavit of service has been filed today. The postal item was delivered to the addressee and returned to sender. His learned advocate in the court below, has also been duly served and the matter was appearing in the list since long. It was taken up on the last occasion i.e. on January 29, 2024, but none appeared on behalf of the opposite party on that date. Again the matter was fixed today.

3. The order impugned dated May 18, 2023, passed by the learned Civil Judge (Senior Division), 6th Court at Alipore, South 24 Parganas, is under challenge before this court. The application for amendment of the plaint filed by the plaintiff under Order 6 Rule 17 of the Code of Civil Procedure was rejected. The plaintiff filed a

suit for eviction and recovery of khas possession against the opposite party in respect of one shop room, measuring 100 sq.ft., situated at 41/1, Biren Roy Road (West), presently known as Hochi Minh Sarani, inter alia, on the ground of reasonable requirement.

4. The mother of the present plaintiffs was the plaintiff no.1 (since deceased). The ground for reasonable requirement was elaborately discussed in paragraph 5 of the plaint. It had been stated that the income of the husband of the present plaintiff no.1 (Mrs. Karuna Shasmal) was reasonably low and the plaintiff no.2 wanted to start a business of a tailoring shop. Her husband could also assist her in running the shop at his leisure.

5. Moreover, the sons of both the plaintiffs were engineers and the shop room was required for the sons to run their own business. The suit proceeded and evidence was recorded, when the plaintiffs filed an application for amendment with certain averments to further explain and elaborate the nature of reasonable requirement. After the pandemic situation had badly affected the job scenario for the engineers, the sons of the plaintiffs wanted to start a joint business, from the shop room. Additional facts with regard to the

poor condition of employment of the sons of the plaintiffs and the fact they wanted to start their own enterprise from the shop room, has been narrated. It has been further stated that the son of Aruna Ghosh wanted to come back to Kolkata from Bangalore and start a business with the son of Karuna Shasmal, as he was unhappy with his low paying job.

6. In my opinion, the amendment sought to be incorporated neither changes the nature and character of the suit nor does it amount to withdrawal of an application. The plaintiff wanted to strengthen the ground for reasonable requirement of the property by giving additional facts, owing to charged circumstances, to explain the nature of requirement and the change in the requirement. The truth of such statements is not to be decided in this proceeding.

7. In ***Rajesh Kumar Aggarwal & Ors. vs. K.K Modi & Ors.*** 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."

8. In the decision of ***Life Insurance Corporation of India vs Sanjeev Builders Private Limited & Anr. decided in Civil Appeal No. 5909 of 2022***, the Hon'ble Apex Court laid down the principles governing amendment in paragraph 70 of the decision. The relevant portion is quoted below:-

(ii) All amendments are to be allowed which are necessary for determining of the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(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).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily

required to be liberal especially where the opposite party can be compensated by costs.”

9. Thus, the order impugned is set aside. It is also a fact that there has been delay in filing the application for amendment. The defendant should be compensated by imposition of cost. Thus, cost of Rs.10,000/- shall be paid to the defendant within a period of three weeks from date. The court, upon being satisfied that the cost has been paid, shall accept the amended plaint within a period of six weeks from date. The correctness, truth, veracity and merits of the amendment application are not to be decided at this stage. The defendants shall get an opportunity to file an additional written statement to the amended plaint within the time to be fixed by the court. Both the parties are entitled to adduce further evidence on the amended pleadings. Thereafter, the suit shall be disposed of expeditiously. In case of default, the amended plaint shall not be accepted.

10. The revisional application stands disposed of accordingly.

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

12. 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.)