

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 2926 of 2011

Lakshmi Kant Shaw
Vs.
Raj Kumar Shaw & Anr.

Mr. Souradipta Banerjee
Mrs. Fatima Hassan
... For the petitioner

Mr. Pradip Kumar Kundu
... For the opposite parties

1. This revisional application has been preferred by assailing the order No.37 dated 9th August, 2011 passed by the learned Judge, 12th Bench, City Civil Court, Calcutta in connection with Title Suit No.1684 of 2007 wherein the learned Judge refused the prayer under Order VI Rule 18 of the Code of Civil Procedure (in short, CPC) and allowed one application under Section 151 of the CPC and regularize the amended plaint filed before the Court on 30th July, 2008.

2. Mr. Souradipta Banerjee, learned counsel appearing on behalf of the petitioner has submitted that the plaintiff/opposite party herein filed an application under Order VI Rule 17 of the CPC on 9th May, 2008 with a proposal for amendment of shop room number only in paragraph 1 of the plaint and the prayer was allowed by the order dated 16th July, 2008. It is further submitted that the amended plaint was filed on 30th July, 2008 not

only incorporating the proposed amendment of shop room number but also incorporated the boundaries for which no proposal was made in the application under Order VI Rule 17 of the CPC which was allowed by the Court. It is also submitted on behalf of the petitioner herein that one application under Order VI Rule 18 of the CPC was filed with a prayer for cancellation of the amended plaint. That application was refused by the learned Judge.

3. In opposition to that, Mr. Pradip Kumar Kundu, learned counsel appearing on behalf of the opposite parties has submitted that the amended plaint was filed long back and thereafter additional written statement was also filed and evidence was adduced by the respective parties to the suit and the application under Order VI Rule 18 of the CPC was filed just to delay the process.

4. Having heard the learned counsel appearing on behalf of the parties, I find that the learned Trial Judge rightly refused the prayer for cancellation of amended plaint under Order VI Rule 18 of the CPC which deals with the period of limitation within which the amended plaint has to be furnished before the Court. In this case, it appears that the amended plaint was filed within the statutory period mentioned in Order VI Rule 18 of the CPC.

5. So far as the regularization of the amended plaint is concerned, I find that the plaintiff/opposite party herein never filed any application for amendment under Order VI

Rule 17 of the CPC with a proposal to incorporate the boundaries which was not supplied at the time of filing the plaint before the Court. From the record, it further appears that PW-1/plaintiff, in course of cross-examination, also admitted that at the time of filing plaint, boundary of the subject property was not supplied.

6. Regard being had to the above, in my humble opinion, the amended plaint should not have been filed incorporating the boundaries of the schedule property which was left blank at the time of filing plaint; that too without making any prayer for amendment under Order VI Rule 17 of the CPC before the Court.

7. Therefore, the boundaries incorporated in the amended plaint are liable to be expunged.

8. Accordingly, the later order dated 9th August, 2011 is modified in the following:-

“Regularisation of the amended plaint in respect of the boundaries of the subject property be expunged.”

9. However, the plaintiff/opposite party herein is at liberty to file a fresh amended plaint in terms of this order within 15 days from the date of communication of this order.

10. With the aforesaid observation and direction, the revisional application stands disposed of.

11. Learned Trial Judge is requested to dispose of the Title Suit No.1684 of 2007 preferably within three months from the date of communication of this order.

12. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

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

(Bibhas Ranjan De, J.)