

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

C.O. 2592 of 2023

(Assigned)

Jiyar Sk

Vs.

Sagar Das & Ors.

For the petitioner

:Ms. Manali Biswas, Adv.
Mr. Prantick Ghosh, Adv.

For the Opposite Party no. 1

:Mr. Samik Ganguly, Adv.
Mr. Debangshu Bandhu, Adv.

For the Opposite Party no. 2

:Mr. Abhimanya Banerjee, Adv.
Mr. Partha Sarathi Das, Adv.

Heard On

: 04.07.2024, 05.07.2024,
13.08.2024, 19.08.2024

Judgment On

: 04.09.2024

Bibhas Ranjan De, J. :

1. This revision application has been preferred assailing the order no. 55 dated 25.11.2022 passed by Ld. Civil Judge, (Junior Division), Additional Court, Berhampore, Murshidabad in Title Suit No. 231 of 2016 wherein Ld. Judge refused the prayer under Order 6 Rule 17 of the Code of Civil Procedure (for short CPC) only on the ground of non disclosure of due diligence on the part of the petitioner who could not satisfy reason of filing amendment petition after the commencement of trial.
2. The ground of the case is that the plaintiff/petitioner herein filed a suit for declaration of title in respect of property mentioned in the schedule to the plaint along with a prayer for permanent injunction restraining the defendants/opposite parties from disturbing the peaceful possession of the plaintiff/petitioner herein.
3. Defendants/opposite parties entered appearance in the suit by filing written statements in the year 2017 contending *inter alia* that they obtained the property by purchase and plaintiff recorded his name in the L.R record in connivance with some corrupted officials for settlement of this.

4. After completion of evidence adduced by the parties to the suit plaintiff/petitioner filed an application under Section 6 Rule 17 read with Section 151 of the CPC with a prayer for partition pursuant to the claim of purchase of a portion of land by the defendants/opposite parties.
5. Ld. Judge refused to entertain the prayer for amendment of the plaint solely on the ground of delay particularly in filing of amendment application after commencement of trial.

Argument Advanced:-

6. Ld. Counsel, Ms. Manali Biswas appearing on behalf of the petitioner has contended that during course of evidence the opposite party no. 2 herein produced one registered sale deed executed by one Ganesh Chandra Majumder in favour of the opposite party no. 2 on 07.03.2005 in respect of one decimal of land. Ms. Biswas has further submitted that these facts were unknown to the petitioner and not within his knowledge. Therefore the amendment application could not be filed before the commencement of trial as the opposite parties though mentioned about the said deed in their written statement but only produced the same at the time of tendering evidence.

7. Before parting with, Ms. Biswas has stated that the proposed amendment is required for just adjudication of the instant title suit and also to avoid multiplicity of proceedings.
8. In support of her contention, Ms. Biswas relied on a case of ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr.*** reported in **2022 SCC OnLine SC 1128.**
9. In opposition to that, Ld. Counsels, Mr. Samik Ganguly & Mr. Abhimanya Banerjee appearing on behalf of the opposite parties respectively have contended that the amended petition is liable to be rejected in lemini 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.
10. Ld. Counsels, appearing on behalf of the opposite parties have 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. In addition to that, they have also highlighted that no specific averment has been made in the revision application on behalf of the petitioner in order to substantiate the abnormal delay in preferring the proposed amendment application. So, both the Ld. Counsels have duly

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

Analysis:-

- 11.** 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.”

- 12.** 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 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.

13. 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.

14. In ***Life Insurance Co.*** (supra) Hon'ble Supreme Court dealt with identical issue of granting amendment application after commencement of trial and concluded by laying down the following guidelines:-

“71. Our final conclusions may be summed up thus:

71.1. Order 2 Rule 2CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order 2 Rule 2CPC is, thus, misconceived and hence negated.

71.2. All amendments are to be allowed which are necessary for determining 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 6 Rule 17CPC.

71.3. The prayer for amendment is to be allowed:

71.3.1. If the amendment is required for effective and proper adjudication of the controversy between the parties.

71.3.2. 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 do 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).

71.4. *A prayer for amendment is generally required to be allowed unless:*

71.4.1. *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.*

71.4.2. *The amendment changes the nature of the suit.*

71.4.3. *The prayer for amendment is mala fide, or*

71.4.4. *By the amendment, the other side loses a valid defence.*

71.5. *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.*

71.6. *Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*

71.7. *Where the amendment merely sought to introduce an additional or a new approach without introducing a time-barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*

71.8. *Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*

71.9. *Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*

71.10. *Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.*

71.11. *Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party*

would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi [Vijay Gupta v. Gagninder Kr. Gandhi, 2022 SCC OnLine Del 1897])”

15. In the aforesaid view of the matter, I am unable to concur with the observation made by the Hon’ble Judge in the order impugned in this revision application. Accordingly, the order no. 55 dated 25.11.2022 passed by Ld. Civil Judge, (Junior Division), Additional Court, Berhampore, Murshidabad stands set aside.

16. The prayer for amendment stands allowed. Plaintiff/petitioner herein is at liberty to file amended plaint before the Trial Court incorporating the proposed amendment, within two weeks from the date of this order.

17. As a sequel, this revision application being No. C.O. 2592 of 2023 stands allowed.

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

19. Connected applications, if there be, also stands disposed of accordingly.

- 20.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 21.** 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.]