

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

***C.O. 2616 of 2022
Rina Mukherjee & Anr.***

VERSUS

Sanat Chandra Datta & Anr.

For the petitioner:

Mr. Animesh Paul, Adv.
Ms. H. Rajdev, Adv.

Judgment on: March 03, 2024

Biswaroop Chowdhury,J:

The petitioners before this Court are the plaintiffs/Landlords in a suit for eviction and appellants in the appeal being Title Appeal No. 84 of 2013 and respondents in Title Appeal No. 85 of 2013 pending before Learned Civil Judge (Senior Division) 2nd Court Howrah both being heard analogously arising out of decree passed in T.S. No – 219/2004 passed by Learned 1st Court of Civil Judge (Junior Division) at Howrah. The petitioners being aggrieved by the Order dated 27-07-2022 passed by the Learned Appellate Court in rejecting the application under Order VI Rule 17 CPC have come up before this Court with the instant application.

The case of the petitioners before the Learned Appellate Court may be summed up thus:

1. The appellants as plaintiffs herein have filed, a suit for eviction and recovery of Khas possession against the defendants/respondents which was numbered as Title suit No – 219 of 2004 before the Learned First Civil Judge, (Junior Division) at Howrah. Upon contested hearing the Learned Trial Court vide its order dated 29th April 2013 was pleased to pass decree of partial eviction. Being aggrieved and dissatisfied with the said decree, the plaintiffs as appellants have preferred the title appeal whereas the respondents as appellants have also preferred separate Title Appeal being Title Appeal 84 of 2013 and Title Appeal 85 of 2013, and both the Title Appeals are analogously heard by the Appellate Court.
2. The appeals are at the argument stage. In the meantime the Learned Advocate of the appellants/plaintiffs have detected that due to unintentional latches, negligence in advertence and/or lack of knowledge some relevant facts which are specifically mentioned in the schedule written herein below are unreported in the plaint.
3. That admittedly there is serious mistake on the part of the petitioners and their engaged Advocate but it is completely un-intentional latches and negligence on their part. The proposed amendment as mentioned in the schedule of the application is very much required to be incorporated in the plaint to substantiate the case of the plaintiff.

4. That the proposed amendment would not change the nature and character of the instant suit. Just for proper adjudication of the instant suit and to decide the issues as involved with the instant matter, proposed amendment is necessary.
5. That there is no embargo to allow this application and if the proposed amendment is allowed the defendants/respondents would get ample opportunity to controvert the proposed amendment portion, otherwise, your petitioner would suffer irreparable loss and injury.

The plaintiffs have sought to incorporate the proposed amendment in paragraph No. 3 of the plaint by a new sentence inserted in the following manner:-

“Though the Said Deed of gift contains other properties, but apart from the suit holding, all other properties were sold long prior to institution of the instant suit, in favour of third party. Save and except the suit holding, the plaintiffs have no other alternative suitable accommodation elsewhere, in any manner whatsoever. The plaintiff no. 1, Smt. Rina Mukherjee’s paternal property i.e. 15, Shibtala Lane is situated far away from the suit property, since her marriage, she never been stayed and/or allowed to stay at her said parental property and she has no interest to claim any ownership right and possession at the said property by any means. In Para no. 6 of the said plaint, a new Para be added as in the manner i.e. the plaintiffs never received any monthly rent and/or fair rent from the defendants after death

of the original tenant Narayan Chandra Dube and no fresh agreement of tenancy, ever been executed between them, in respect of the said tenancy. With effect from 9th July 2006 and onwards, under the provisions to section 2(g) of West Bengal Premises tenancy Act 1997, defendants became trespassers.”

The opposite parties/respondents filed written objection to the petition under Order VI Rule 17 of the Code of Civil Procedure denying the contentions made by the Petitioners/appellants.

It is contended by the opposite parties that the application of the appellants/petitioners is false speculative, frivolous, mala fide motivated, concocted and harassing. It is further contended that the said application is barred by the provisions of estoppel waiver and acquiescence and as such the said application is liable to be rejected on contest. The opposite parties denied that there is serious mistake on the part of the petitioners or that their engaged Advocate, or that it is completely, unintentional Laches and negligence on their part or that the proposed amendment allegedly mentioned in the schedule to the application is very much required to be incorporated in the plaint to substantiate the case of the plaintiff in the manner as falsely alleged or at all. The opposite parties have contended that the application under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure for amendment of plaint filed by the Plaintiffs/Appellants/Petitioners is neither maintainable in facts nor in Law

and the same is absolutely speculative motivated mala fide concocted and harassing and the said application is liable to be rejected on contest. The answering respondents submitted that from the face of the record it will appear that the instant appeal is at the stage of argument, and the Ld. Advocate on behalf of the answering defendant already addressed their argument before the Ld. Court and only the reply of the said appellants/plaintiffs left open against the point of law as canvassed while addressing argument by Learned Advocate of the answering respondent. The opposite parties/respondents have further submitted that while arguments were advanced by their advocate drawing attention to exhibit 1 and 2 about plaintiff's acquiring several properties the plaintiffs/petitioners came up with the application for amendment to cover up their laches. The opposite parties have also submitted that where the proposed amendment affects the right of the other side it cannot be allowed by any manner whatever and no advantage will be given to cover the gap which has surfaced after conclusion of trial and also argument of respondent and further laws always aid the vigilant not the slumber.

Learned Judge by Order dated 27/07/2022 was pleased to reject the application under Order 6 Rule 17 of CPC filed by the plaintiffs/petitioners on 14/03/2022. The following observation is made by the Learned Trial Judge.

There is no explanation in the body of the instant application as to why the proposed amendment could not be brought before the Learned Trial Court before the suit entered the stage of trial. It is needless to say that after the amendment of the provision of Order 6 Rule 17 of CPC no amendment of pleading shall be allowed after the suit has entered the stage of trial 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. Thus, merely because a great relevancy with the question in controversy between the parties, it is not likely to be allowed 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. In the case in hand the trial of the suit not only commenced but the suit itself is also disposed of by the Learned Trial Court after full-fledged hearing. Moreover the matter is now pending before the Appellate Court and that too at such a stage when the final disposal of the same is just one stage away the proposed amendment as we have already discussed earlier if allowed to be incorporated in the plaint shall undoubtedly fill up the lacuna of the plaintiff which the defendants/respondents have been able to extract some rights in their favour out of the evidence on record. Now that some substantial rights already accrued in favour of the defendants because of the lacuna of the plaintiffs/appellants such right shall undoubtedly be defeated if the proposed amendment is allowed to be incorporated in the

plaint and in that case the defendants/respondents shall suffer irreparable loss and injury which cannot be compensated by adequate damages’.

The petitioners/plaintiffs being aggrieved by the Order dated 27/07/2022 passed by Learned Civil Judge Senior Division 2nd Court Howrah in Title Appeal No. 84 of 2013 and Title Appeal No. 85 of 2013 both heard analogously has come up with the instant application under Article 227 of the Constitution of India.

The petitioners have contended that the Learned Judge in the Court below acted illegally and with material irregularity in failing to consider the true, scope ambit; and intent of the provision contained under Order 6 Rule 17, of the Code of Civil Procedure 1908 and thereby erred in rejecting the application for amendment of the plaint as filed by the petitioners herein. The petitioners further contended that the order impugned reflects entire non-application of judicious mind on the point as to whether the said proposed amendment is required to be incorporated for proper and effective adjudication of the issues involved which is the intent of the Provision contained under Order 6 Rule 17 of the Code. It is also contended that the Learned Judge in the Court below acted illegally and with material irregularity in failing to consider that it is trite law that an amendment even if belated but relates to proper and effective adjudication of the issues involved cannot be thrown out on the mere ground of delay.

Pursuant to filing of this revisional application notice was issued upon the opposite parties. Opposite party no-1 died during the pendency of the suit and his heirs opposite party no-1(a) and 1(b) were impleaded in his place and stead. Opposite party no-1(a) and 1(b) appeared in the revisional application and contested the case.

Heard Learned Advocate for the petitioner and Learned Advocate for the opposite party no 1(a) and 1(b). Perused the petition filed and materials on record.

Learned Advocate for the petitioners submits that the suit filed by his clients for eviction of the opposite parties was disposed by passing decree of partial eviction. The parties thereafter filed separate appeals against the aforesaid partial decree of eviction which were registered as Title Appeal Nos. 84 and 85 of 2013, and are being heard analogously by the Learned First Appellate Court. Learned Advocate further submits that during argument of the aforesaid appeals, the defendants/opposite parties, for the very first time, contended that the deed of gift dated 20th March 1963, as stated in paragraph No. 3 contains that the plaintiffs have got several other properties and as such the plea of reasonable requirement does not stand. Learned Advocate also submits that the defendants have raised such factual issue for the very first time in course of the appeal, and the plaintiffs in order to deal with such factual issue which was never raised before have filed an application under Order 6 Rule 17 of the Code of Civil Procedure, for

amendment of the plaint to contend that though the said deed of gift dated 20th March 1963 contains other properties but apart from the suit holdings all other properties were sold long prior to institution of the suit and save and except the suit holding, the plaintiffs have no other alternative accommodations elsewhere. In addition to the aforesaid, the plaintiffs also proposed to add that the plaintiffs have neither received any monthly rent from the defendants after death of the original tenant nor any fresh agreement of tenancy was ever executed and further with effect from 9th July 2006, the defendants have become trespassers under Section 2(g) of the West Bengal Premises Tenancy Act 1997. Learned Advocate further submits that Learned Appellate Court below is empowered to decide the factual issue even in appeal. Learned Advocate also submits that the proposed amendment was very much required to be incorporated in the plaint to substantiate the case of the plaintiff and the same would not in any way change the nature and character of the instant suit for eviction. It is submitted by Learned Advocate for the Petitioner that it is well settled that even if a prayer for amendment is belated then also the question that needs to be decided is to see whether by allowing the amendment, the real controversy is to be resolved, as the Court must bear in favour of doing full and complete justice to the party. Learned Advocate also submits that a party cannot be refused just relief merely because of some mistake, negligence inadvertence or even infraction of rules of procedure. Learned Advocate for the petitioner has relied on the following Judicial decisions:

- **Rajesh Kumar Aggarwal and others Vs K.K. Modi and others**
[Reported in (2006) 4 SCC P. 385]
- **Surendra Kumar Sharma Vs Makhan Singh.** [Reported in (2009) 10 SCC P 626.]
- **Mohila Ramkali Debi Vs Nandram Nandram (Dead) Through Legal representatives and others.** [Reported in (2015) 13 SCC P-132.]

Learned Advocate for the opposite party no – 1(a) and 1(b) submits that the plaintiffs/petitioners in the midst of argument before the Learned First Appellate Court took out an application seeking amendment of plaint. By dint of the order impugned the Learned First Appellate Court rejected such amendment application filed at a belated stage. Learned Advocate further submits that the plaintiff had categorically averred that upon the death of Narayan Chandra Dutta the legal heirs became joint tenants in respect of the suit property at a monthly rental of Rs. 200/-. At this stage of appeal in view of the aforesaid admission that the legal heirs became monthly tenants, the plaintiff cannot retract from such admission and assert that they are trespassers. Learned Advocate also submits that if such amendment is allowed the very nature of the suit shall change and a right that has vested upon the defendants shall be divested. It is submitted by the Learned Advocate that one of the Primary consideration for adjudicating the ground of reasonable requirement is whether the plaintiff is having other accommodation or not and whether he reasonably requires the suit premises or not. Local inspection was done at the trial stage. Parties had

also lead evidence as to whether the plaintiff is having an alternative accommodation or not. The averments made in the complaints reflect that the plaintiffs have other suitable accommodation. Learned Advocate further submits that at this stage of the proceedings the plaintiff is trying to introduce new fact stating that the other properties which were mentioned in the complaint had already been alienated by her prior to the institution of this suit. Admittedly, the alienation and sale was done prior to the institution of the suit and as such the plaintiff was well aware of such fact. She willingly and deliberately did not disclose such fact in the complaint. Learned Advocate also submits that before the Learned First Appellate Court, when the entire issue has opened and particularly when the defendants have challenged the finding of the Learned Trial Court as regard reasonable requirement, the plaintiff is seeking to introduce such fact which was well within her knowledge at the time of institution of suit.

Before proceeding to decide on the issue as to whether the prayer of the plaintiffs/petitioners should be allowed during pendency of the First Appeal it is necessary to consider the provisions contained in Order VI Rule 17 of the Code of Civil Procedure.

Rule 17 of Order VI of the Code of Civil Procedure Provides as follows:

‘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.'

Thus upon considering the proviso of Order VI Rule – 17 of the Code of Civil Procedure it will appear that ordinarily a Court cannot allow amendment after 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. In the instant matter the plaint is sought to be amended at the appellate stage.

Before proceeding further on this issue it is necessary to consider some judicial pronouncements.

In the case of **Surender Kumar Sharma (Supra)**, the Hon'ble Supreme Court observed as follows:

"It is also well settled that even if the amendment prayed for is belated, while considering such belated amendment, the Court must bear in favour of doing full and complete justice in the case where the party against whom the amendment is to be allowed, can be compensated by cost or otherwise. (See B.K. N. Pillai Vs. P. Pillai and another [AIR 2000 SC 614 at Page 616]). Accordingly, we do not find any reason to hold that only because there was

some delay in filing the application for amendment of the plaint, such prayer for amendment cannot be allowed.

So far as the second ground is concerned i.e. the prayer for amendment of plaint, if allowed, shall change the nature and character of the suit, we are unable to accept this view of the High Court. We have carefully examined the amendment prayed for and after going through the application for amendment of the plaint, we are of the view that the question of changing the nature and character of the suit, if amendment is allowed, cannot arise at all. The suit has been filed for eviction *inter alia* on the ground of arrears of rent. It cannot be disputed that even after the amendment, the suit would remain a suit for eviction. Therefore, we are unable to agree that if the amendment of the plaint is allowed, the nature and character of the suit shall be changed. Accordingly, the High Court was not justified in holding that the nature and character of the suit shall be changed, if such prayer for amendment is allowed.”

In the case of **Mahila Ramkali Devi and Others (Supra)** the Hon’ble Supreme Court observed as follows:

“It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The Court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting *malafide* or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.

In our view, since the appellant sought amendment in paragraph 3 of the original plaint, the High Court ought not to have rejected the application.

In the case of *Jai Jai Ram Manohar Lal vs. National Building Material Supply, Gurgaon*, AIR 1969 SC 1267, this Court held that the power to grant

amendment to pleadings is intended to serve the needs of justice and is not governed by any such narrow or technical limitations.’

In Pandit Ishwardas vs. State of Madhya Pradesh and Ors., AIR 1979 SC 551, this Court observed :-

- “4. We are unable to see any substance in any of the submissions. The learned counsel appeared to argue on the assumption that a new plea could not be permitted at the appellate stage unless all the material necessary to decide the plea was already before the Court. There is no basis for this assumption.
5. There is no impediment or bar against an appellate Court permitting amendment of the pleadings so as to enable a party to raise a new plea. All that is necessary is that the Appellate Court should observe the well-known principles subject to which amendments of pleadings are usually granted. Naturally, one of the circumstances which will be taken into consideration before an amendment is granted is the delay in making the application seeking such amendment and, if made at the Appellate stage the reason why it was not sought in the trial court. If the necessary material on which the plea arising from the amendment may be decided is already there, the amendment may be more readily granted than otherwise. But, there is no prohibition against an Appellate Court permitting an amendment at the appellate stage merely because the necessary material is not already before the Court.”

In the case of **Rajesh Kumar Aggarwal and others (Supra)** the Hon’ble Supreme Court observed as follows:

“In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file

an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.

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. This cardinal principle has not been followed by the High Court in the instant case.'

Upon considering the above-mentioned judicial decisions it is clear that the first and foremost aspect which a Court must consider while deciding prayer for amendment is whether the proposed amendment is necessary to decide the real dispute between the parties.

It is also settled by catena of decisions that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of

amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court. As the proviso to Order VI Rule 17 of the Code of Civil Procedure provides that no application for amendment shall be allowed after the trial has commenced, unless Court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial it is for the plaintiffs/petitioners to establish as to what prevented them to make the prayer for amendment before Trial Court prior to commencement of trial. The petitioners/plaintiffs in the petition for amendment has stated that due to unintentional laches and negligence on the part of the petitioners and their Learned Advocate certain relevant facts could not be incorporated in the plaint. Now so far the negligence on the part of the plaintiffs is concerned the same cannot be condoned as the trial is over and the case is at the appellate stage. However with regard to unintentional laches on the part of Learned Advocate for the plaintiff it is to be seen whether it is bona-fide or not, as it is held in different Judicial pronouncements that litigants should not suffer due to bona-fide wrong advice on the part of their Learned Advocates.

The Plaintiffs/Petitioners while filing the plaint submitted the Deed of Gift executed by Mrinalini Debi in favour of plaintiff no-2 Goutam Mukherjee since deceased. In the said deed of gift it was maintained that the plaintiffs have got several other properties. Thus whatever was contained in the said deed of gift was before the Learned Trial Court. It is not by any written statement or by evidence of the defendants/opposite parties that the fact of plaintiffs/petitioners having several other properties have come up. Hence the act of the petitioners/plaintiffs cannot be said to be mala-fide having intention of suppressing material facts. In a suit for eviction filed on the ground of reasonable requirement a plaintiff/landlord is required to plead about the particulars of any house under his occupation and is also required to plead about not being in possession of any suitable accommodation. It is for the defendant/tenant to show with particulars that the plaintiff is having suitable

accommodation in order to prove that the suit property is not required by the plaintiff landlord. In this regard the provision contained Section 6(1)(d) of the West Bengal Premises Tenancy Act 1997 is quoted hereinbelow.

S-6. Protection of tenant against eviction.

- (1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any contract no order or decree for the recovery of the possession of any premises shall be made [by the Civil Judge having jurisdiction] in favour of the landlord against the tenant [except on a suit being instituted by such landlord] on one or more of the following grounds:

a) ***

b) ***

c) ***

d) where the landlord or any person for whose benefit the premises is held, reasonably requires the premises for his own occupation and the landlord or such person is not in possession of any suitable accommodation within the same Municipal Corporation or Municipality or in any other area within ten Kilometres from such premises where this Act extends.

e) ***

f) ***

g) ***

h) ***

i) ***

j) ***

k) ***

l) ***

Thus upon bare reading of the provision contained in Section 6(1)(d) of the West Bengal Premises Tenancy Act 1997 that the Landlord/Plaintiff in a suit for eviction of Tenant under Section 6 of the said Act on the ground of reasonable requirement of the suit property will have to plead in the plaint that he is not in possession of any suitable accommodation within the same Municipal Corporation or Municipality or in any other area within ten Kilometres from such premises, where the said Act extends. It is upto the defendant/tenant to dispute and prove the contrary that the landlord/plaintiff has in his possession any other suitable accommodation within the same Municipal Corporation or Municipality or in any area within ten Kilometres from such premises where the said Act extends. Whether an accommodation is suitable or not depends upon the facts of each case. Again upon reading the provision contained in Section 6(1)(d) of the West Bengal Premises Tenancy Act 1997 it will appear that the said provision contains about Landlord having suitable accommodation in his possession and not merely property. The deed of gift by which Mrinalini Debi transferred her undivided suit property in favour of Goutam Mukherjee since deceased contained a clause that the donees/plaintiffs have got several other properties. In this regard it would be proper to clarify and mention that the word property is a general term, which includes both moveable and immovable property. Again immovable property may include agricultural land, non-agricultural land garden, building, etc. From the use of word properties it cannot be inferred that it is an accommodation in the possession of the plaintiffs unless specific particulars are given. However parties to the suit or proceedings have an obligation to

disclose before the Court all relevant facts. In this case although the plaintiffs filed before the Court document by which plaintiffs acquired ownership of the suit property but have not given particulars about the other properties owned by them, and whether they are in possession of any accommodation elsewhere. Now whether the plaintiffs can be condoned of such laches is the issue to be decided. It is well settled that parties should not suffer due to laches of their Advocate and an Advocate is not merely an agent of his client but an officer of the Court. When a litigant approaches an Advocate with his case and submits necessary documents it is the duty of the said Learned Advocate to obtain clarification with regard to the facts of the case and documents furnished. In order to place before the Court all relevant and material facts; an advocate has an obligation to take relevant material instructions on the facts of the case. Although the plaintiffs/petitioners submitted before their Learned Advocate the document by which they acquired ownership of suit property, and the said document mentions about plaintiff having ownership of other properties but no instruction was obtained by the plaintiffs' advocate about his other properties and other accommodation in their possession if any. This was a bona-fide mistake on the part of Learned Advocate for the plaintiffs for which the plaintiffs cannot be made to suffer. Thus even if the prayer for amendment is made at a belated stage during pendency of appeal the same should be allowed as it is necessary for determining the real questions in controversy between the parties. Now with regard to the issue of incorporating the pleading that the defendants are trespassers from 9th July 2006 onwards under the provisions of Section 2(g) of West Bengal Premises Tenancy Act 1997, as the same is a question of law it may be incorporated at the appellate stage also, and such incorporation does not change the nature of suit.

In the facts and circumstances discussed above this Court is of the view that the amendments sought for by the petitioners/plaintiffs should be allowed subject to the payment of costs.

Hence this Revisional Application Stands allowed. Order dated 27-07-2022 passed by Learned Civil Judge (Senior Division) 2nd Court at Howrah in Title Appeal No – 84 of 2013 and Title Appeal 85 of 2013 both being heard analogously is set aside. The amendment sought for by the petitioners before Learned Civil Judge (Senior Division) 2nd Court at Howrah in Title Appeal No-84 of 2013 and Title Appeal No-85 of 2013 in their application dated 14-03-2022 stands allowed subject to the payment of costs of Rs. 5,000/-. Out of the total costs of Rs. 5,000/-, Rs. 3,000/- is to be paid to the opposite parties by the petitioners and Rs. 2,000/- is to be paid by petitioners to the High Court Legal Service Committee. The amendments shall be carried out within four weeks. This Revisional Application stands disposed.

(Biswaroop Chowdhury,J)

