

06.03.2024
Item No. 9
PG
Ct. No.7

C.O. 3183 of 2023
Sri Gopal Shaw
Vs.
Sri Ranjib Poddar

Mr. Sanjib Sethfor the petitioner

Mr. Debjit Mukherjee
Ms. Susmita Chatterjee
Mr. K. Bhattacharya
Ms. Sinjini Chakraborty
Ms. Priyanka Jana.....for the opposite party

1. This application under Article 227 of the Constitution of India is at the instance of the defendant in a suit for eviction and is directed against the order dated 23rd June, 2023.
2. By the order impugned, the application under Order 6 Rule 17 of the Code of Civil Procedure filed by the defendant/petitioner herein stood rejected.
3. Learned advocate appearing for the petitioner submits that the learned trial Judge, without considering the merits of the application for amendment, rejected the same only on the ground that the same was filed after the commencement of trial.
4. He further submits that the petitioner has explained the reasons for not filing the application prior to commencement of trial.
5. Mr. Mukherjee, learned advocate appearing for the opposite party submits that the application for

amendment was filed at the stage of cross-examination of plaintiff's witness no. 1. He further submits that the petitioner is trying to challenge the title of the opposite party in the suit premises by way of amendment of written statement, which is not permissible in law as the suit is a suit for eviction of a tenant. In support of his submission, Mr. Mukherjee placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Kanaklata Das & Ors. vs. Naba Kumar Das & Ors.** reported at **(2018) 2 SCC 352**.

6. Heard the learned advocates for the parties and perused the materials placed.
7. Proviso to Order 6 Rule 17 of the Code curtails the power of the Court to allow an application for amendment after commencement 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.
8. After going through the application for amendment, this Court finds that the petitioner has failed to explain the delay in approaching the Court with the application for amendment.
9. That apart, after going through the proposed amendment, this Court finds that the petitioner being a tenant in respect of the suit premises, has sought to challenge the title of the inducting landlord, which is not permissible in view of the provisions laid down

under section 116 of the Evidence Act. That apart the instant suit being a suit for eviction, the question of title to the suit premises is not germane in such suit.

10. The Hon'ble Supreme Court in *Kanaklata Das (supra)* held that the landlord in a suit for eviction is required to plead and prove only two things to enable him to claim a decree for eviction against his tenant from the tenanted suit premises. Firstly, that there exists a relationship of landlord and tenant between the parties; secondly, the grounds on which the plaintiff/landlord has sought eviction of the defendant. It was further held therein that the question of title to the suit premises is not germane for the decision of the eviction suit.
11. This Court, is, therefore, of the considered view that the proposed amendments are not necessary for the purpose of deciding the real controversies between the parties.
12. For the aforesaid reasons, this Court is not inclined to interfere with the order impugned. C.O. 3183 of 2023, accordingly, stands dismissed.
13. There shall be, however, no order as to costs.
14. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)