

17.05.2024
Item No.16
gd/ssd

CO/3414/2023
SRI JOYDEV MONDAL
VS
SRI UDAY GHOSH

Mr. Sanjay Mukherjee
..for the Petitioner.

Syed Nasirul Hossain,
Mr. Md. Jalaluddin,
..for the O.P.

The order dated 5th July, 2023 passed by the learned Civil Judge (Junior Division), 6th Court at Howrah in Title Suit No.263 of 2017 is under challenge in this application under Article 227 of the Constitution of India at the instance of the defendant.

The opposite party filed a suit for declaration that the petitioner has got no right to cause any obstruction to the peaceful use and occupation of the opposite party in the suit passage which was described in Schedule-B to the plaint.

The opposite party filed an application under Order VI Rule 17 of the Code of Civil Procedure praying for incorporating certain facts.

Such application was allowed by the learned trial judge.

Being aggrieved, the defendant has approached this court.

Mr. Mukherjee, learned advocate appearing for the petitioner vehemently argues that the Schedule of the suit property was sought to be changed by way of amendment of the plaint. He further submits that it is only after the Commissioner submitted his report in connection with a local inspection held pursuant to an order of the court at the instance of the opposite party herein the said application for amendment was filed. He, therefore, submits that the application for amendment being filed at a belated stage, such application ought to have rejected by the learned trial judge.

The learned advocate appearing for the opposite party submits that the proposed amendments are necessary for the purpose of deciding real controversies between the parties.

Heard the learned advocates for the parties and perused the materials placed.

After going through the application for amendment this court finds that the description of the Schedule-B property was not sought to be changed by the opposite party by way of amendment.

After going through the Schedule of the amendment application this court finds that the

proposed amendments are necessary for the purpose of deciding real controversies between the parties.

The learned trial judge observed that if the proposed facts are not inserted by way of amendment that would defeat the purpose of trial and might affect the court to arrive at a just and reasonable conclusion.

In view thereof, this court is not inclined to interfere with the order impugned in exercise of powers under Article 227 of the Constitution of India.

At this stage, Mr. Mukherjee submits that the opposite party has already filed the amended plaint.

In view thereof, liberty is granted to the petitioner herein to file the additional written statement on or before June 12, 2024.

With the above observations and directions, CO 3414 of 2023 stands disposed of.

There shall be no order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)