

05.08.2024
Item No.1,ML
Ct.19
A.J.

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

C.O. 3625 of 2023

I.A. No. CAN 1 of 2024

(CAN application is not in file)

Swapan Kumar Nag & Ors.

-Vs-

Sukumar Das

Mr. Sukanto Chakraborty,
Mr. Trinath Gangopadhyay,
SK. Zubair Ahmed.

.....for the petitioners.

Mr. Somnath Bose.

.....for the opposite party.

The present application under Article 227 of the Constitution of India is at the instance of the plaintiffs in a suit for Ejectment and is directed against Order No.56 dated July 26, 2023 passed by the learned 4th Bench of the Small Causes Court at Calcutta in Ejectment Suit No. 209 of 2015.

The learned Trial Judge by the order impugned has dismissed an application filed by the plaintiffs praying amendment of the paint *inter alia* on the grounds that the trial of the suit has commenced and the amendment sought for, if allowed, would change the nature and character of the suit.

Mr. Chakraborty, learned Advocate for the petitioners submits that the petitioners are running the business of diagnostic centre and polyclinic from the suit premises, they are seeking eviction of the opposite party from the suit shop room *inter alia* on the grounds of reasonable requirement. The petitioners, during the Covid-19 pandemic period, had felt that there is huge prospect of expanding their business, as such sought for the amendment to qualify therequirement for the suit shop room.

Mr. Bose, learned advocate for the opposite party submits that the amendment has been sought for, not only after

commencement of the trial of the suit but also, if allowed, it would take away the right already accrued to the defendant.

Heard learned counsel for the parties, perused the materials on record.

The plaintiffs, by the proposed amendment, have sought to incorporate averments in the plaint to qualify their requirements for the suit shop room which has developed after the outbreak of the Covid-19 pandemic and the same being subsequent events, the restriction of the proviso appended to Order VI Rule 17 of the Code of Civil Procedure would not be a bar in allowing the said amendment, besides, the suit is pending for the last nine years, in the meantime the quality of requirement for the suit shop room must have changed.

There is nothing on record to suggest that if the amendment sought for is allowed, would affect any accrued right of the defendant.

The order impugned is therefore not sustainable and is accordingly set aside.

The plaintiffs are required to file the amended plaint within a period of two weeks from date and the defendant would be entitled to file additional written statement within two weeks from the date of service of the copy of the amended plaint.

C.O. 3625 of 2023 is thus allowed without any order as to costs.

In view of the disposal of revisional application, the application of extension of interim order being CAN 1 of 2024 has become infructuous and is also disposed of accordingly.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)