

February 13, 2024
Sl. No.49
Court No.19
s.biswas

CO 3391 of 2022

Uttam Kumar Roy
vs.
Arun Chatterjee

Mr. Dipanjan Datta
Mr. Subhajit Chowdhury
Mr. Sayan Datta

... for the petitioner

Mr. P. K. Tarafdar
Mr. Syed Uz Jaman

... for the opposite party

1. The revisional application arises out of an order dated August 1, 2022 passed by the learned Additional District Judge, Fast Track Court, Serampore, Hooghly in Title Suit No.104 of 2016.

2. By the order impugned, the learned lower appellate court rejected the application for amendment of the written statement filed by the tenant/appellant therein. According to the petitioner, who was the appellant before the learned court, two other tenants, namely, Jayanta Kundu and Prabir Roy had vacated their respective shop rooms by handing over khas possession of the same in favour of the plaintiff. The reasonable requirement of the plaintiff, as per the plaint case, would be satisfied on account of surrender of such shop rooms by the other two tenants.

3. In such a situation, the defendant sought to insert such fact by amending the written statement. Introduction of an averment that even after delivery of possession from the two tenants, the plaintiff did not start any business in the shop rooms and the same had been kept under lock and key, was also sought for.

4. The suit is for eviction on the ground of reasonable requirement as also the building and rebuilding. The suit was decreed on the said grounds. The appeal is a continuation of the suit. The subsequent change in the requirement of the landlord, on account of the surrender of tenancy by two other tenants, is required to be introduced in the written statement for the ends of justice and for proper adjudication of the appeal. It is a subsequent event and relevant to the appeal filed by the tenant.

5. According to the plaintiff, such amendment would not be necessary to pinpointedly decide the adjudication between the parties in the suit. The plaintiff had claimed eviction of the defendant from the shop room, in respect of which the petitioner/defendant was the tenant. The suit was decreed on the ground of reasonable requirement as also building and rebuilding. The facts sought to be introduced

were incorrect and could not be proved before the court, with cogent materials.

6. According to the petitioner, surrender of such shop rooms would meet the requirement of the plaintiff. The suit for eviction was filed claiming requirement of one shop room to enable the plaintiff to start his own business.

7. The learned court rejected the said application on the ground that there was no material to show how and when such surrender had taken place. In my opinion, such amendment should be allowed. It is for the defendant to prove the veracity and correctness of such statement at the appropriate stage. Moreover, to counter and deny such statement, the plaintiff will get ample opportunity to file an application/rejoinder to the amended written statement. Parties shall also be able to adduce evidence for such limited purpose.

8. Under such circumstances, the amendment is allowed. The additional written statement shall be filed before the learned lower appellate court within a period of four weeks from date. Rejoinder to the said amended written statement shall be filed within two weeks thereafter, and the learned court shall proceed with the appeal, in accordance with law.

9. The revisional application is disposed of accordingly.

10. All parties are directed to act on the basis of the server copy of the order.

11. Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)