

Item No.4
06.02.2024
Court. No. 19
GB

C.O.4080 of 2023

Mahadeb Halder
VS
Sri Bapi Purkait

Mr. Sudarshan Ghosh

...for the Petitioner.

Mr. Sandip Das

...for the Opposite Party.

1. The revisional application arises out of an order dated September 22, 2023, passed by the learned Civil Judge (Junior Division), 3rd Court at Diamond Harbour, District – 24 Parganas (South) in Title Suit No.172 of 2018.
2. The suit is for eviction and recovery of khas possession, upon revocation of licence. The plaint case is that the plaintiff had constructed a brick built shop room with a tin roof, named and styled as 'Mangalchandi Machinery Parts'. The shop was being run by the plaintiff and the plaintiff used to sell spare parts. The electric connection was also in the name of the plaintiff. The plaintiff got employment subsequently, at a university. He was finding it difficult to run the shop and engaged the petitioner to help him out. The petitioner was an unemployed youth and the plaintiff's nephew. Initially accounts were rendered to the plaintiff upto May 25, 2018. Thereafter, the petitioner stopped cooperating and threatened the plaintiff that he would take away the business.
3. The plaintiff contended that the petitioner being his nephew, was allowed a permissive right to run the shop,

but as the petitioner stopped cooperating with the plaintiff and was threatening to usurp the business, the permission was revoked. That the petitioner was nothing but a licensee and lost every right to remain in the premises upon revocation of such licence.

4. On the other hand, the petitioner claimed to have purchased the property and constructed a shop room. In the written statement, it was stated that the shop room had brick built walls with tin roof and it was in the ground floor. Upon detecting the mistake with reference to the deed of sale, the said facts were sought to be corrected by way of an amendment. Such amendment was sought to be introduced after the evidence of the P.W. was closed. The court rejected the amendments except the typographical errors, inter alia, holding that the written statement was filed in March 2022 in which the defendant had said that the shop room which was purchased had brick walls and tin roof. Subsequently, on account of expansion of business the defendant constructed the second floor upon the pucca roof of the first floor and the roof was made of tin. Once the witnesses of the plaintiff had been examined and cross-examined, it would not be proper to allow the defendant to amend the written statement.
5. This Court finds that the petitioner wanted to incorporate that he had purchased one shop of brick built walls and tin roof, which was repaired by him and the said shop was named and styled as “Mangalchandi Machinery Parts”.

6. In my view, the amendment should be allowed as the petitioner wanted to correct a misdescription of the shop room which he had purchased. Instead of tin roof, tile roof was sought to be incorporated. Instead of ground floor, one shop was to be incorporated.
7. This amendment neither changes the nature and character of the suit, nor does it amount to withdrawal of admission. In case of written statements amendments should be allowed liberally.
8. The contention of Mr. Das, learned advocate for the opposite party that the plaintiff will be prejudiced as an admission is sought to be withdrawn, is not correct. This is a suit for eviction, accounts and permanent injunction. The plaint case is that the defendant was a licensee. The defendant acted contrary to the interest of the licensor and the licence was revoked. Thus, the defendant could not remain in the property as a trespasser and the suit was filed for eviction, recovery of possession of the shop room and accounts. The plaintiff claimed to be the owner of the shop and the business.
9. This Court deems it fit to refer to a decision of the Hon'ble Apex Court with regard to the liberal approach to be adopted by courts while considering amendment of written statements. Substituting or altering a plea, is permissible in case of written statement. Reliance is placed on ***Revajeetu Builders and Develpers vs. Narayanaswamy and Sons and ors.*** reported in

(2009) 10 SCC 84. Paragraph 26, of which is quoted below:-

“26. In the same judgment of Usha Balashaheb Swami [(2007) 5 SCC 602] , the Court dealt with a number of judgments of this Court and laid down that the prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute the cause of action or the nature of claim applies to amendments to the plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.”

10. The Apex Court in the case of ***Andra Bank vs. ABN Amro Bank N.V. and others*** reported in **2007SC 2511**, observed that delay was no ground for refusal of prayer for amendment of a written statement. The only question to be considered by the Court was whether such amendment would be necessary for adjudicating the real controversy between the parties in the suit. The Court could not go into the question of merits of the amendment. The Hon’ble Apex Court in the case of ***Ramchandra Sakharan Mahajan vs. Damodar Trimbak Tanksale (Dead) and others*** reported in **(2007) 6 SCC 737**, held that if the amendment enabled the Court to pin-pointedly consider the real dispute between the parties and helped to decide the case more satisfactorily, the amendment ought to be allowed.

11. In the decision of ***Rajesh Kumar Aggarwal and others vs. K.K.Modi and others reported in AIR 2006 SC 1647***, the Apex Court held that the Court was not to go into the merits. The relevant portion is quoted below:-

"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."

12. In such a suit, the description of the property and correction thereof, would not change the nature and character of the suit and also would not dislodge the plaint case. The plaint case is that the shop room with brick built walls and tin roof was constructed by the plaintiff. Whereas, the defence case now is that the defendant had purchased one shop with brick built walls with tile shed and repaired the same. Such shop was the personal business of the defendant and the plaintiff did not have any right, title and interest in the said suit.
13. The truth and veracity of the statements made by either party has to be proved in evidence. However, allowing the amendment of the written statement would not amount to alteration in the defence. Thus, the amendments are allowed in terms of the schedule in the application. However, the plaintiff will get a chance to file a rejoinder to the amended written statement. Such amended written

statement will be filed within a period of four weeks. The rejoinder thereto, shall be filed within a week.

14. As such amendment was sought to be incorporated at a belated stage, the delay caused to the plaintiff must be compensated with cost. Thus, cost of Rs.10,000/-shall be paid to the plaintiff within three weeks from date. The learned court shall accept the amended written statement upon being satisfied that the cost has been paid to the plaintiff. The plaintiff will be entitled to recall the witnesses for further examination-in-chief on the points added in the written statement. Cross-examination shall also be permitted. The suit shall be disposed of within the next eight months.
15. Accordingly, the revisional application is disposed of.
16. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)