

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.O. No. 4481 of 2015

Sailendra Nath Roy

-Versus-

Biman Chandra Roy & Ors.

For the Petitioners : **Mr. Shyamal Chakraborty,
Mr. Debojyoti Mondal.**

For the Respondents : **Mr. Biswabrata Basu Mallick,
Mr. Biman Haldar,
Ms. S. Pal.**

Hearing concluded on : **30.01.2024**

Judgment On : **01.02.2024**

Prasenjit Biswas, J:-

1. Feeling aggrieved and dissatisfied with the impugned order dated 30.11.2015 passed by the learned XIII Bench, City Civil Court, Calcutta the petitioner/plaintiff has preferred this instant application filed under Article 227 of the Constitution of India.

2. By passing the impugned order learned Trial Court allowed the application for amendment filed by this petitioner to the extent so that he can make prayer for recovery of possession of 165 square feet but the other contentions made in that application was rejected by the Court.

3. Affidavit in opposition filed on behalf of the Opposite Party No.5 and affidavit in reply there to filed on behalf of the petitioner be kept with the record.

4. The run up of facts in brief leading to the instant petition has to be minuted. The present petitioner as a plaintiff instituted a suit against the defendants with a prayer for decree of declaration that he is a monthly tenant in respect of case property and he is entitled to protection against the eviction save and except under due process of law as well as decree of permanent injunction restraining the defendants and their men and agents from disturbing him in respect of the enjoyment of the suit room. It is stated by the plaintiff that he was monthly tenant in respect of two tenancies being one in respect of shop room and another in respect of one godown and out of the said two tenancies the plaintiff surrendered one tenancy in respect of godown but retains other tenancy being shop room as mentioned in the schedule of the plaint as a monthly tenant at the rate of rent of Rs. 100 per month payable according to English calendar month. It is stated by the plaintiff that out of two landlords one namely Prabhat Kumar Roy died leaving behind his wife, two daughters and one son who are all arrayed as opposite parties no(s). 1 to 4 in this case. It is stated by the plaintiff/petitioner that he was not aware about the transfer of the entire premises to the opposite party No. 5 (herein) being a promoter for making development and construction over the premises No. 121, Kolkata 13 on demolishing the existing building.

5. It is stated by the plaintiff/petitioner that the said opposite party No. 5 asked him to vacate the said case property i.e. shop room immediately and failing which he will be facing dire consequence. Finding no other alternative the plaintiff knocked the door of the Court by instituting the suit against the defendants with a prayer for temporary injunction. After getting notice the defendants entered their appearance in the suit and after hearing the said injunction application filed by the petitioner was rejected by the trial court. Against the said refusal of granting ad interim order of injunction the plaintiff preferred an appeal before this Court and on hearing the said appeal this Court has been pleased to direct the opposite party No. 5 to keep a shop room measuring 165 square feet reserved subject to the result of the suit.

6. It is the claim of the defendant/opposite party No. 5 that the plaintiff surrendered both the tenancies i.e. the godown and shop room in favour of the land lords by surrender letters dated 02.04.1985 and 15.01.2003 but in respect of those letters this petitioner/plaintiff denied and disputed the same and it is claimed that the tenancies of the shop room was never been surrendered by him and he is still a tenant in respect of the said shop room. It is the case of the plaintiff that on 09.03.2015 he was surprised to find that the lock putting by him on the said premises has been allegedly removed by someone and some other lock has been placed thereupon at the main entrance gate of the shop room. Since there has been a change of ownership and it was not in the knowledge of the plaintiff and since the subsequent events regarding removing of the lock of the plaintiff from his shop room and putting a new lock therein during the pendency of the suit this plaintiff/petitioner was needed to put all such events into the record and make necessary amendment of the pleading. Accordingly application

praying for amendment was filed at the behest of the petitioner with a prayer for making necessary amendment of the pleading and for getting necessary relief in view of the said subsequent event. The defendant filed written objection against the said application for amendment filed by the plaintiff and after hearing of both sides it was allowed to the extent that the plaintiff can make prayer for recovery of possession of 165 sq.ft if he can establish his right, title and interest under the provision of the West Bengal Premises Tenancy Act but the other contentions made in the application was rejected by the Trial Court.

7. Mr. Shyamal Chakraborty, learned Counsel appearing on behalf of the petitioner submitted before me inter alia that the learned Trial Court erred in law while disposing of the application for amendment as it cannot decide the merit of the suit and as such it has exceeded the jurisdiction so vested and failed to consider that during pendency of the suit this petitioner was dispossessed by the defendant from the scheduled property as mentioned in the plaint. The attention of this Court is drawn about the last portion of the impugned order wherein learned Trial Court held that the application for amendment is allowed to the extent that the plaintiff can make prayer for recovery of possession of 165 square feet if he can establish his right, title and interest under the provisions of the West Bengal Premises Tenancy Act and such observation by the learned trial court is opposed to the settled principle of law as the question of establishment of right arises after conclusion of the trial on production of the oral and documentary evidence and the same cannot be established at the stage of making application for amendment.

8. Reliance is placed by the learned Counsel for the petitioner about the decisions rendered by the Hon'ble Apex Court in case of **Andhra Bank Vs. ABN**

Amro Bank N. V. and Others reported in **AIR 2007 Supreme Court 2511** and in case of **Rajesh Kumar Aggarwal and Ors Vs. K.K. Modi and Others** reported in **AIR 2006 Supreme Court 1647**. It is submitted by the learned Counsel that Hon'ble Apex Court observed in the said decisions that the Court should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

9. Mr. Biswabrata Basu Mallick, learned Counsel appearing on behalf of the respondent No. 5 submitted that all the allegations as made in the plaint is totally untrue, misconceived and baseless and the petitioner is not entitled to any relief as prayed for. It is further submitted that learned Trial Court rightly rejected the application for amendment as the proposed amendment would change the nature and character of the suit. Moreover this Court has already decided the issue of the petitioner in order dated 25.08.2014 by directing upon the opposite party no.5 that 165 square feet be reserved subject to the result of the suit and this petitioner has no document to establish his claim over the case property. The attention of this Court is drawn about the surrender letters dated 02.04.1985 and 15.01.2003 signed by the plaintiff and it is submitted at the behest of the opposite party No. 5 that the question of recovery of possession arises if the petitioner was at all in possession of the case property which he was not and the petitioner was failed to produce any document with regard to his claim from the period of 2003 to institution of the suit which has been observed by the trial court in his order while deciding the injunction application . As per submission made by the learned Counsel that there is no illegality or material irregularity in the impugned order

passed by the learned Trial Court and accordingly, the present application filed by the petitioner is devoid of any merit and it may be dismissed outright.

10. The short important question that arises for consideration in the present revision application is with regard to the power of the Court to allow an application for amendment under Order VI Rule 17 of C.P.C. The Scope of Order VI Rule 17 of C.P.C and the manner in which the Courts ought to consider applications for amendment is quite well settled by a long line of decisions by the Hon'ble Supreme Court.

11. The Apex Court in **Baldev Singh and Others Vs. Manohar Singh and Another** reported in **(2006) 6 Supreme Court Cases 498** wherein it was held at paragraph 8 as under:

“It is well settled by various decisions of this Court as well as the High Courts in India that courts should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. In this connection, reference can be made to a decision of the Privy Council in Ma Shwe Mya v. Maung Mo Hnaung [(1920-21) 48 IA 214 : AIR 1922 PC 249] in which the Privy Council observed: (IA pp. 216-17)

All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit.”

12. It is profitable to quote the observation of the Hon'ble Apex Court in **Usha Balashaheb Swami v. Kiran Appaso Swami, (2007) 5 SCC 602**. In this case it was further held at paragraph 17 interalia that-

“From a bare perusal of Order 6 Rule 17 of the Code of Civil Procedure, it is clear that the court is conferred with power, at any stage of the proceedings, to allow alteration and amendments of the pleadings if it is of the view that such amendments may be necessary for determining the real question in controversy between the parties. The proviso to Order 6 Rule 17 of the Code, however, provides that no application for amendment shall be allowed after the trial has commenced unless the court comes to a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. However, proviso to Order 6 Rule 17 of the Code would not be applicable in the present case, as the trial of the suit has not yet commenced.”

13. In ***Rajesh Kumar Aggarwal v. K.K. Modi*, (2006) 4 SCC 385** the Hon’ble Apex Court has consistently held that the amendment to pleading should be liberally allowed since procedural obstacles ought not to impede the dispensation of justice. In this case it is held at paragraphs 18 and 19 as under:

“18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.

19. 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. This cardinal principle has not been followed by the High Court in the instant case.”

14. Without discussing the law laid down by the Apex Court the amendment should be allowed liberally, unless there appears an apparent mischief. The inherent and dominant purpose of allowing an amendment is to minimize litigation even if there is any plea that the relief sought by way of amendment was directed by time as arguable in the circumstances of the case when the amendment is incorporated. Such a plea also cannot be thrown away summarily without affording an opportunity of being heard into the law on the point under the facts and circumstances of the particular case.

15. In my considered opinion, by allowing the amendment application by including the relief of recovery of possession, it does not mean that the suit is decreed as prayed for. The plaintiff/ revision petitioner will have to establish his case before the trial court by adducing oral and documentary evidence in support of his case. While allowing the amendment application the merit of the suit is not going to be decided. Further, after allowing amendment application, the defendants are entitled to file additional written statement by denying averments made by the plaintiff. Further, the proposed amendment is a pre-trial amendment and the same could be decided liberally. By allowing the same multiplicity of proceeding could be avoided and the parties need not spend their time and money for litigation. By allowing the proposed amendment no prejudice will be caused to the respondent herein.

16. Moreover, It should be kept in mind that the Trial Courts which are the Courts of first instance must adopt a balanced approach in dealing with the applications and there has to be well considered reasoning behind the decision in these aspects. It has to be pointed out that in cases where the amendment of the plaint is necessary and the same is not allowed, it could virtually defeat the very purpose of filing the suit itself.

17. Looking at the present controversy in light of the above said discussion, it could be seen that it is not the case of either of the respondents that there would be a prejudice caused to them in the event of the plaint being amended. On the contrary, in the event the plaint is not amended, it is the plaintiff who would be prejudiced apart from there being confusions that could arise paving way for multiplicity of proceedings.

18. In view of the foregoing reason, I am of the considered opinion that the proposed amendment application filed by the plaintiff is to be allowed.

19. In the result:

(a) this Civil Revision Petition being C.O. 4481 of 2015 is allowed and order dated 30.11.2015 passed by the learned XIII Bench, City Civil Court at Calcutta in connection with Title Suit No.87 of 2014 is hereby set aside;

(b) the learned XIII Bench, City Civil Court at Calcutta is directed to permit the revision petitioner to carry out the amendment and file amended plaint;

(c) the defendants are permitted to file an additional written statements if any, within 30 days from the date of filing of the amended plaint.

(d) thereafter, the trial court is directed to dispose of the suit preferably within a period of six months from the date of receipt of a copy of this order without giving unnecessary adjournments to either of the side and without being influenced by the order of this Court.

20. No cost. Consequently, connected miscellaneous petition if any is closed.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)