

Court No. 6
(265719)

11.09.2025
(AD 8)
(S. Banerjee)

CO 362 of 2024

Dharmendra Shaw
Vs.
Sri Bijay Shaw & Ors.

Mr. Siva Prasad Ghose

...for the petitioner

Mr. Gopal Chandra Ghosh, Sr. Advocate

...for the opposite parties

Although this matter is appearing under the heading 'Extension of Interim Order', with the consent of the learned advocates appearing for the respective parties the matter is taken up for final hearing.

This application under Article 227 of the Constitution of India is at the instance of the substituted plaintiffs and is directed against an order being no. 46 dated January 8, 2024 passed by the learned Additional District Judge, 3rd Court at Barrackpore in OS No. 71 of 2015. By the order impugned, the prayer for amendment of the probate application which was subsequently converted to a proceeding under the letter of administration, stood rejected.

Mr. Ghose, learned advocate appearing for the petitioner submits that through inadvertence in the original application the date of the last will and testament was wrongly mentioned as February 1, 1994.

Along with the probate application the will was annexed wherefrom it would appear that the date of the last will and testament of the deceased Iswar Shaw is June 15, 1993. He submits that for correction of a typographical error of the date of the last will and testament of the said deceased, the application for amendment was filed which was rejected by the learned trial judge only on the ground of delay without considering as to whether such amendment was necessary for the purpose of adjudication of the dispute between the parties.

Mr. Ghosh, learned Senior Advocate appearing for the opposite parties submits that the said error cannot be said to be a mere typographical or an inadvertent mistake as the instant case relates to grant of letter of administration to the will. He submits that there may be a case of existence of more than one will executed by the deceased testator. He submits that the petitioner sought to change the subject-matter of the proceeding for grant of letter of administration by way of amendment. He further

submits that the evidence have been completed and the proceedings for grant of letter of administration is at the stage of argument. He, therefore, submits that at such a belated stage prayer for amendment should not be allowed.

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

The predecessor-in-interest of the present petitioner who was the executor of the last will and testament of Iswar Shaw filed the probate application with a copy of the will annexed thereto. A copy of the said will has also been annexed to the civil revision application. It is not in dispute that the copy of the will which has been annexed to the civil revision application was filed along with the application for grant of probate which was subsequently converted to a proceeding for grant of letter of administration after the death of the executor.

Though the proviso to Order 6 Rule 17 of the Civil Procedure Code limits the power of the court to allow the prayer for amendment after commencement of trial, it is now well-settled that the proviso cannot be an absolute embargo in allowing the prayer for amendment even after the commencement of trial if the proposed amendment is necessary for the purpose of deciding the real controversies between the parties

in the suit and the same is necessary for the purpose of avoiding multiplicity of proceedings. It is also equally well-settled that mere delay cannot be a ground for rejecting an application for amendment provided a time-barred claim is not intended to be set up by way of amendment.

The Hon'ble Supreme Court in the case of Life Insurance Corporation of India –Vs.- Sanjeev Builders Private Limited reported at (2022) 16 SCC 1 held that the typographical errors may be allowed to be corrected. After going through the schedule of amendment this court is of the considered view that unless the date of the last will and testament of the deceased Iswar Shaw is allowed to be corrected, the same would create unnecessary complications in this proceeding.

In view thereof, this court is inclined to interfere with the order impugned. Accordingly, the order impugned is set aside. The application for amendment stands allowed subject to payment of cost of Rs. 10,000/- to the opposite party no. 2 within the time limit fixed for filing of amended plaint.

The petitioner is directed to file a copy of the amended plaint within four working days after reopening of the learned trial court after the puja vacation. The petitioner shall also serve a copy of the

amended plaint to the learned advocate appearing for the opposite parties on or before the aforesaid date.

The opposite parties will be at liberty to file additional written statement within a period of two weeks thereafter.

The petitioner and the opposite parties will be at liberty to pray for recalling of witnesses in accordance with law if so advised.

Accordingly, CO 362 of 2024 stands disposed of.

Pending application, if any, shall also stands disposed of.

(Hiranmay Bhattacharyya, J.)