

13.02.2025
DL.185
Court No.22
S. Gayen

CO 548 of 2023

**Bibek Ranjan Chakraborty
Versus
Smt. Lakhmi Chakraborty & Ors.**

Mr. Gautam Das

...for the Petitioner

1. This revisional application has been filed assailing the order dated 8th December, 2022 passed in connection with Title Suit No. 5 of 2016, wherein the learned Civil Judge (Junior Division), Bidhannagar refused the prayer for amendment as plaintiff/petitioner herein could not show that in spite of due diligence, he was unable to raise the issue before the commencement of trial.
2. Learned counsel appearing on behalf of the petitioner has submitted that after filing of the suit for declaration and recovery of possession with consequential relief, the learned Trial Court disposed of the interim injunction application promulgating an order restraining the defendant Nos. 1 and 2 from creating any disturbance in the peaceful occupancy of the plaintiff in the 'B' schedule property.
3. Subsequently, the plaintiff/petitioner herein filed an application under Order 39 Rule 2A read with Section 151 of the Code of Civil Procedure against

the defendants/opposite parties for violating the order of injunction in respect of 'B' schedule property. The learned counsel appearing on behalf of the petitioner has submitted that such application under Order 39 Rule 2A of the Code of Civil Procedure was filed on account of forceful occupancy of the same by the defendants after promulgation of the injunction order.

4. Learned counsel appearing on behalf of the petitioner has submitted that the whole factum of violation was incorporated in the misc. case under Order 39 Rule 2A of the Code of Civil Procedure by filing an application under Order 6 Rule 17 of the Code of Civil Procedure dated 20th February, 2021 which was allowed on 20th November, 2021 by the learned Trial Judge considering, *inter alia*, that it was a subsequent event.
5. Now coming to the impugned order, I find that learned Judge did not allow the prayer for amendment of the plaint on the ground that the same was filed after commencement of trial as well as the fact that subsequent event was within the knowledge of the plaintiff/petitioner herein.
6. I have gone through the application under Order 6 Rule 17 of the Code of Civil Procedure very carefully particular paragraph 6, wherein, I find that the plaintiff/petitioner herein stated all facts

wherefrom it appears that it was not within the knowledge of the plaintiff/petitioner herein that the application under Order 6 Rule 17 of the Code of Civil Procedure was not filed in the suit by the learned counsel engaged on his behalf. All the facts were explained in paragraph 6 of the application under Order 6 Rule 17 of the Code of Civil Procedure.

7. It is settled that if an application for amendment is filed after commencement of trial, the petitioner has to offer an explanation to the satisfaction of the Court, so as to come to the conclusion that in spite of due diligence, the plaintiff could not have raised the matter before the commencement of trial.
8. Here in this case, I have gone through the plaint and the proposed amendment, wherefrom I find that the proposed amendment is necessary for proper adjudication of real controversy between the parties.
9. Considering overall facts and circumstances, I find that the plaintiff/petitioner herein could not introduce the proposed amendment due to the ground mentioned in paragraph 6 of the application leaving no scope to come to conclusion that the plaintiff/petitioner herein deliberately did not introduce those facts earlier.

10. In the aforesaid view of the matter, I find that this Court, while exercising jurisdiction under Article 227 of the Constitution of India, should interfere with the order impugned in this revisional application, whereby an application under Order 6 Rule 17 of Code of Civil Procedure was rejected.
11. As a sequel, the order impugned stands set aside.
12. The application under Order 6 Rule 17 of the Code of Civil Procedure dated 4th November, 2022 is allowed.
13. The petitioner is directed to file amended plaint before the learned Trial Court within one week from the date of communication of this order. The defendants/opposite parties are also liberty to file additional written statement within the period prescribed by the Court.
14. With the aforesaid observations and directions, the revisional application stands disposed of.
15. Interim order, if any, stands vacated and connected application, if any, also stands disposed of accordingly.
16. The learned advocate appearing on behalf of the petitioner is directed to intimate the order to the learned Trial Judge.
17. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

18. Urgent Photostat certified copy, if applied for, be given to the parties upon compliance with all requisite formalities.

(Bibhas Ranjan De, J.)