

D/L - 6
31.01.2025
Court. No. 5
S.Kundu

C.O. 2798 of 2024

Sukumar Saha
Vs.
Karuna Saha, since deceased, her legal heir Alok Saha

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Mr. Kaustav Bhattacharyya,
Ms. Priyanka Jana

...for the petitioner.

Mr. Somnath Ghosal,
Mr. Satyajit Senapati,
Mr. Dipanjan Karmakar

...for the opposite party.

1. Challenging the order dated 11th July, 2024 passed by the learned Civil Judge (Junior Division), 2nd Court, Howrah in Title Suit No. 16211 of 2014 rejecting the petitioner's application for amendment of the plaint filed under the provisions of Order VI Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code), the instant revisional application has been filed.
2. Mr. Mukherjee, learned advocate representing the plaintiff/petitioner by placing before this Court the plaint would submit that the plaint case proceeds on the premise that the petitioner was inducted in the suit property as a tenant. The suit property is a shop room. During second week of August, 2012, taking advantage of the temporary absence of the plaintiff, the original

defendant no. 1 took over possession of the shop room by breaking open the door lock of the suit property. Since then the defendant no. 1 is in unlawful possession of the tenanted shop room. Particulars of the shop room have been identified in the plaint. According to the plaintiff since the defendant despite request refused to re-deliver possession of the suit property, the plaintiff was constrained to file the suit *inter alia*, praying for recovery of possession of the suit property. The above suit is contested by the defendant/opposite party.

3. It is plaintiff's case that during the pendency of the aforesaid suit on 4th August, 2021, the defendant no.2 had demolished the shop room with a view to make new construction thereon. In order to bring such fact to the notice of the learned Court, in the form of subsequent event, the plaintiff/petitioner had filed an application praying for amendment of the plaint. Such application was duly contested by the opposite party by filing written objection.
4. The learned Judge by the order dated 11th July, 2024 by taking note that the suit has reached the stage of arguments and by proceeding on the premise that a new case cannot be made out was pleased to reject the application for amendment.
5. Mr. Mukherjee, learned advocate appearing in support of the aforesaid revisional application would submit that the learned Judge failed to exercise jurisdiction in

rejecting the application for amendment of the plaint to bring on record subsequent event. He submits that in the facts noted hereinabove, unless the amendment application is allowed the petitioner shall suffer irreparable loss.

6. Mr. Ghosal, learned advocate appearing on behalf of the opposite party would submit that the suit has already reached the stage of arguments. By way of the amendment application the plaintiff/petitioner is attempting to make out an entirely new case. According to him the demolition has not taken place and it is necessary to make an enquiry before allowing such amendment. Further if the amendment is allowed, the same would change the nature and character of the suit. The learned Judge has rightly rejected the amendment application. No interference is called for.
7. Having heard the learned advocates appearing for the respective parties, I find that the petitioner is a tenant under the defendant/opposite party. It is petitioner's case that the defendant illegally taking advantage of the temporary absence of the petitioner from the suit property had taken over possession of the suit property. The petitioner as plaintiff has filed the suit for recovery of possession of the shop room. The case made out in the amendment application would highlight the fact that during the pendency of the suit, the above shop room had been demolished by the defendant. The

amendment application was necessitated to bring on record the subsequent development.

8. It is true that the suit trial has commenced and presently the same is at the stage of arguments. Although, the case made out by the petitioner as rightly pointed out by the learned advocate for the opposite party is a new fact, however, such fact is being introduced by way of subsequent event. The plaintiff/petitioner could not have perceived happening of such an event at the time of filing of the plaint. The law recognises the right of the plaintiff to introduce any subsequent event which is material for the purpose of adjudicating the suit. In my view the aforesaid fact apart from being a subsequent event would elucidate the learned Court in arriving at a correct finding. Although, the advocate for the defendant/ opposite party would submit that an enquiry is necessary to ascertain the correctness of the allegations sought to be introduced by way of the amendment, I am of the view that such course is not permissible in law. While deciding an application for amendment, the court cannot go into the correctness of the statements or the merits of the case made out which is sought to be introduced by the amendment. Having regard thereto, I am of the view that the learned Judge had acted with irregularity in rejecting the application for amendment of the plaint to bring on record the subsequent

development. The order dated 11th July, 2024 cannot be sustained. The same is accordingly set aside. The amendment application filed by the plaintiff is allowed.

9. The petitioner is directed to file amended copy of the plaint before the learned Trial Court within a period of two weeks from date.
10. The opposite party shall be at liberty to file additional written statement, if any, within three weeks from the service of the copy of the amended plaint.
11. With the above observations and directions, the revisional application stands disposed of.

(Raja Basu Chowdhury, J.)