

15.01.2025
Item No.
A 1087
Saswata

C.O. 3603 of 2024

**Md. Salauddin Rangrez
versus
Sk. Daud & Anr.**

Mr. Tarak Nath Halder

...For the petitioner

Mr. Shibaji Kumar Das

Mr. A. Ahmed

Mr. Dipendu Sarkar

...For the opposite parties

1. Challenging the order no. 93 dated 12th September 2024 passed by the Learned Civil Judge (Junior Division), 1st Court at Sealdah, South 24 Parganas in Ejectment Suit no. 14 of 2017, the instant revisional application has been filed.
2. The petitioner is aggrieved by the fact that despite the aforesaid application for amendment being filed belatedly after commencement of the trial and after the witness action was complete, the Learned Judge without arriving at a finding that despite due diligence, the opposite parties could not raise the matter before commencement of the trial, had allowed the amendment application. To understand the controversy involved, it would be necessary to briefly note down the facts giving rise to the instant revisional application.
3. An ejectment suit was filed before the Court of Civil Judge (Junior Division), 1st Court at Sealdah, inter alia, praying for eviction of the defendant no. 1 from the suit property and for recovery of khas possession from the defendant no. 1 by invoking the provisions of Section 6(4) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the "said Act"). The defendant no. 1/ petitioner is contesting the suit by filing written statement. Admittedly, the trial of the suit had commenced and on

22nd August 2024, an application for amendment under Order VI Rule 17 of the Code of Civil Procedure 1908(hereinafter referred to as the “Code”) was filed. To understand the scope of the amendment, it is necessary to reproduce the schedule of the plaint and the schedule of the amendment sought for one after the other:

“SCHEDULE OF PROPERTY ABOVE REFERRED
TO
(SUIT PREMISES)”

All that piece and parcel two rooms one bath and privy all made of brick built wall with tile shed with pucca flooring having total area measuring more or less 465 Sq. Ft. along with right to use common passage for ingress and egress being a part of portion of premises No. 22/4A/34, Khagendra Chatterjee Road, P.S. Cossipore, Kolkata – 700002, District – 24 Parganas North.”

“The Schedule of Amendment of Plaint:-

That after Para No.37 of the Plaint, a new Paragraph as Para No.37A shall be incorporated in the following manner:-

a> “37A. That the defendant’s tenancy was/is all along consisting of two rooms, one bath and privy, having total area measuring more or less 465 Sq.ft., alongwith right to use common passge for ingress and egree, situated at and being part of Premises No. 22/4A/34, Khagendra Chatterjee Road, P.S.- Cossipore, Kolkata- 700 002; but during pendency of the suit, the defendant made partition of one room (out of the two rooms) by making a partition wall and thereby he connverted one room (out of two rooms) into two rooms and accordingly the defendant is at present in occupation of three rooms at the suit premises, which are described in the Schedule hereunder written.

b> In Page-10 of the plaint, i.e., in the 1st line of ‘Schedule of Property above referred to; after the words “All that piece and parcel two rooms”, the words “which are at present three rooms by making Partition wall inside one room” shall be inserted and thereafter the remaining words will be the same and the last word of the Schedule of Property “North” will be replaced by the word “South”. ”

4. The defendants contested the said application by filing written objection. By order no. 93 dated 12th September 2024, the Learned Judge had allowed such application subject to payment of costs of Rs.2500/- to be paid by the plaintiffs to the defendants.

5. Mr. Halder, learned advocate appearing in support of the instant revisional application by drawing attention of this Court to the provisions of Order VI Rule 17 of the Code would submit that in a case where trial has already commenced, in absence of any finding by the Court that in spite of due diligence the party could not have raised the matter before the commencement of trial, no amendment ought to have been allowed.
6. By referring to the judgment delivered by the Learned Trial Court, he submits that in fact the Learned Judge had come to a finding that there had been no due diligence by the plaintiffs. In support of his contention, Mr. Halder has placed reliance on two several judgments both delivered by the Hon'ble Supreme Court in the cases of ***Vidyabai & Ors. v. Padmalatha & Anr.*** reported in ***AIR 2009 Supreme Court 1433*** and ***Ajendraprasadji N. Pandey & Anr. v. Swami Keshavprakeshdasji N. & Ors.*** reported in ***AIR 2007 Supreme Court 806***.
7. By referring to the aforesaid judgments, he submits that unless the amendment is sought for at the appropriate stage as envisaged by the law, the parties seeking such amendment disentitle themselves from such relief. Admittedly, since the trial had commenced and there being no due diligence, no amendment ought to have been allowed, especially when the basis for such amendment is found in the report of the Commissioner which was filed prior to the commencement of the trial.
8. Per contra, Mr. Das, learned advocate appearing for the opposite parties, by drawing attention of this Court to the schedule of the plaint, would submit that the suit property comprises of two rooms, one bath and privy all made of brick built wall with tile shed, with pucca flooring having total area measuring more or less 465 Sq. Ft., along with

right to use common passage for ingress and egress being a part or portion of premises No. 22/4A/34, Khagendra Chatterjee Road, P.S. Cossipore, Kolkata – 700002, District – 24 Parganas North.

9. He submits that when the instant suit was filed, the plaintiffs were not aware of the fact that the defendants had partitioned one of the rooms by a wall and thereby converted one room into two rooms. Such fact went unnoticed and was detected only when a senior counsel was appointed. He submits that this is not a case where the plaintiffs failed to set forth their facts in the suit but is a case of illegality being detected by the Commissioner during the commission proceeding which went unnoticed till such time the same was scrutinized by the senior counsel. It is further submitted that when an amendment is sought for, which seeks to enlighten the Court about the real controversy in issue between the parties, ordinarily such amendment is not refused. In a case of this nature, the issue whether the amendment has been filed belatedly, takes a back seat. In support of his contention, Mr. Das has placed reliance on two several judgments of the Hon'ble Supreme Court in the cases of ***Surender Kumar Sharma v. Makhan Singh*** reported in ***(2009) 10 SCC 626*** and ***State of Madhya Pradesh v. Union of India & Anr.***, reported in ***(2011) 12 SCC 268***. He also submits that the intent of the petitioner was only to clarify the position having regard to the schedule already identified in the plaint.

10. By drawing attention of this Court to the certified copy of the order dated 22nd November 2024 he submits that the petitioner has already filed an additional written statement and the order for amendment has thus been accepted. According to him, at this stage, there is no scope to

continue with the instant revisional application any further and the same should be dismissed.

11. Heard the learned advocates appearing for the respective parties and considered the materials on record. I find that the instant suit is one for ejectment of the defendant no. 1 and recovery of possession. The suit has been filed under the provisions of Section 6(4) of the said Act. The suit property mentioned in the schedule has been noted hereinabove. The difficulty arose in the matter when the Commissioner's report identified a different schedule than the one indicated in the plaint. A perusal of the amendment application would demonstrate that from the aforesaid report of the Commissioner, the plaintiffs had come to learn that in the month of January 2023, the defendant had partitioned one of the rooms by a partition wall thereby converting the said one room out of the two rooms into two rooms and accordingly are in occupation of three rooms, which fact would corroborate from the Commissioner's report. As rightly pointed out by Mr. Halder, the Commissioner's report was available even before the commencement of the trial. However, a perusal of the amendment application would demonstrate that the factum of the defendants converting one of the rooms into two rooms and the legal effect thereof went unnoticed until such time the same was detected and pointed out by a senior counsel.
12. Although, a lot of stress has been laid by Mr. Halder by placing reliance on the judgment delivered by the Hon'ble Supreme Court in the cases of **Vidyabai** (*supra*) and **Ajendraprasadji N. Pandey** (*supra*) to drive home the point that a belated application for amendment which does not comply with the provision of Order VI Rule 17 of the Code, cannot be accepted, it cannot be lost sight of

that the discretionary powers of the Court to accept amendment are wide and unfettered and in a fit case, the Court always reserves the right to accept the belated amendment application, especially when the same is for deciding the real controversy between the parties. The judgment delivered in the case of **Ajendraprasadji N. Pandey** (*supra*) is distinguishable. In the said case a totally new and inconsistent case was sought to be introduced. In the case of **Vidyabai** (*supra*), the Hon'ble Supreme Court in paragraph 14 thereof had categorically held that the primary duty of the Court while deciding an application for amendment is to consider whether such amendment is necessary to decide the real dispute between the parties and if such condition is fulfilled, the amendment should be allowed.

13. Admittedly, in this case the schedule of the plaint proceeds on the basis of the original plaint case and the plaintiffs had no reason to consider in absence of the Commissioner's report that one of the rooms in the suit property had been converted into two rooms by construction of a partition wall. The aforesaid evidence is a vital piece of evidence. In my view, sufficient explanation has been provided in the petition for filing the application belatedly.

14. Having regard to the schedule of the plaint, in my view, the incorporation of the factum of erection of a partition wall in the suit property as reflected in the Commissioner's report in the form of amendment would aid the Court in deciding the real controversy in issue. As noted earlier, the right to incorporate such amendment has been recognised and the aforesaid also finds support from the judgments delivered in the cases of **Surender**

Kumar Sharma (*supra*) and **State of Madhya Pradesh** (*supra*).

15. Although, Mr. Das has attempted to make out a case that by reasons of the petitioner filing an additional written statement, the petitioner may have lost his right to challenge, I am unable to accede to such contention by reason of the premise that the petitioner had immediately after allowing of the amendment had approached this Court by filing this revisional application. Since, this Court could not take up the matter as pointed out by Mr. Halder, the petitioner was compelled to file an additional written statement.

16. As discussed and for reasons noted hereinabove, I do not find any reason to interfere save to the extent of filing the belated application, the petitioner ought to be appropriately compensated. In my view, Rs.2500/- is not adequate, a sum of Rs. 25000/- be paid by the plaintiffs to the petitioner towards costs.

17. With the above observations and directions, C.O. 3603 of 2024 is disposed of.

18. There shall no order as to costs.

All parties shall act on the basis of server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)