

29.01.2025
Item No.18
gd/ssd

CO/4117/2024
ABDUL GAFFAR BADGUJAR
VS
MD. AYUB KHICHI AND ORS.

Mr. Tarique Quasimuddin,
Mr. Abbas Ibrahim Khan
..for the Petitioner.

The petitioner has challenged the order being No.35 dated 1st August, 2024 passed by the learned Judge, XII Bench, City Civil Court at Calcutta in Title Suit No.1118 of 2018.

By the impugned order the application for amendment of plaint stood rejected.

The learned Advocate appearing for the petitioner submits that the petitioner has filed the application for amendment of plaint for the purpose of certain additional reliefs and the pleadings in support of such reliefs are already available in the last amended plaint.

He further submits that the proposed amendments are necessary for deciding the real controversies in the suit.

The petitioner claims to be a tenant in respect of a flat comprising of one room being Room No.414 with bath and privy in Block-A lying and situated on

the 4th floor of Premises No.17, Kashinath Mallick Lane, Police Station – Jorasanko, Kolkata – 700073 under the defendant nos.4 and 5 at a monthly rental of Rs.450/- payable according to English Calendar month.

The suit was filed in the year 2018.

It appears from the record that the plaint of the said suit was amended earlier on two occasions by orders dated 21st August, 2019 and 7th April, 2022. The amended plaint filed as per the order dated 7th April, 2022 has been annexed along with this application under Article 227 of the Constitution of India at page 64 of the said application.

The petitioner herein filed an application under Order 6 Rule 17 of the Code of Civil Procedure praying for amendment of the plaint. The schedule of amendment starts from page 2 of the said application and ends at page 10 of the said application.

After going through the schedule of the amendment application, this court finds that the petitioner has sought to incorporate pleadings as well as reliefs by way of amendment.

The petitioner prayed for inclusion of a new paragraph after paragraph 4. The petitioner has also prayed for inclusion of certain words in the first sub-paragraph of paragraph 8 of the plaint. Some

insertion was also prayed for in the 3rd line of paragraphs 11, 12, 13, 14 and so on.

It further appears from the schedule of amendment that seven sub-paragraphs have been sought to be added and inserted after paragraph 21 of the amended plaint to be inserted as paragraph nos.21(a) to 21(g).

The petitioner has also sought to introduce seven new prayers by virtue of the proposed amendment.

After going through the schedule of the amendment application and the last amended plaint filed by the petitioner pursuant to the order dated 7th April, 2022, this court finds that the petitioner has sought to change the nature and character of the suit which is predominantly a suit for declaration of tenancy right and for permanent injunction. Petitioner is trying to make out a new case by way of amendment.

The learned trial judge has specifically observed that the plaintiff is claiming to be a tenant and if he is allowed to change the nature of reliefs by filing successive applications thereby trying to improve the case made out in the original pleadings, the trial of the suit will never be completed.

To the mind of this court, the proposed amendments are not necessary for the purpose of

adjudication of the real controversy between the tenant and his landlord and for permanent injunction. The application for amendment is absolutely a malafide one only to drag the instant suit.

The learned trial judge has assigned cogent reasons for rejecting the application for amendment of the plaint.

In view thereof, this court is not inclined to interfere with the order impugned.

Accordingly, CO 4117 of 2024 stands dismissed without, however, any order as to costs.

The learned trial judge is directed to dispose of Title Suit No.1118 of 2018 as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

It is made clear that all interlocutory applications filed in connection with the said suit shall be disposed of prior to the suit being taken up for peremptory hearing.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)