

(2022) 09 CAL CK 0011
In the Calcutta High Court
Case No : C.O. No. 848 Of 2022

Goutam Hazra & Anr.

APPELLANT

Vs

Pinaki Hazra & Anr.

RESPONDENT

Date of Decision : 05-09-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 8 Rule 1, Order 1 Rule 10(2)

Citation : (2022) 09 CAL CK 0011

Hon'ble Judges : Subhasis Dasgupta, J

Bench : Single Bench

Advocate : Saptanshu Basu, Ram Anand Agarwala, Ananda Gopal Mukherjee, Sonam Roy, Debjit Mukherjee, Susmita Chatterjee

Final Decision : Disposed Of

Judgement

Subhasis Dasgupta, J

Subject of challenge in this case is against an order dated 8th March, 2022, passed by learned Civil Judge (Senior Division), 1st Court, Barasat in Title Suit No. 79 of 2014, rejecting an application under Section 151 of Code of Civil Procedure dated 28.03.2017, filed by the petitioners proposing for giving an opportunity to petitioners to file written statement afresh upon disregarding the previous written statement, allegedly filed by the petitioners (defendant nos. 1 and 2).

Admittedly, this is a suit for partition and permanent injunction.

Mr. Basu, learned senior advocate appearing for the petitioners (defendant nos. 1 and 2) upon adverting to Para-2 to 4 of petition submitted that petitioners had been misled by the opposite party no. 1/plaintiff to put their respective signature on some blank papers, as well as on vakalatnama, which had been subsequently utilized, as their written statement.

Mr. Basu submitted that upon receiving summons of suit, petitioners (defendant

nos. 1 and 2) approached plaintiff (opposite party no. 1) to get the suit property amicably partitioned, and on their proposal, the opposite party/plaintiff assured petitioners that plaintiff would undertake all responsibility to get the suit property amicably partitioned.

Petitioner, thus, upon reposing confidence upon opposite party no. 1/plaintiff, even did not ensure their appearance before the court below in the pending partition suit, and they had no knowledge about filing of written statement, if any, in the partition suit on their behalf. Shortly, thereafter for the ill-treatment of the opposite party no. 1, during the pendency of the suit, petitioners collected the certified copy of the written statement, wherefrom they could learn that the written statement had been allegedly filed on their behalf, which was not the product of their conscious knowledge, and accordingly disputed the same.

By petition under Section 151 C.P.C., petitioners proposed for granting an opportunity to file written statement afresh upon disregarding their written statement, allegedly filed by them. Upon narrating such factual backgrounds, Mr. Basu strongly contended that the written statement allegedly filed was not the perfect reflection of their mind to put up their respective defence, as per their own choice, and it was a product of misrepresentation after being misled, the petitioners put their signature on some blank papers, which had been purposefully utilized to dislodge the petitioners from their proposed defence to be set up in the pending partition suit.

Mr. Basu submitted that a written statement containing contradictory stand was permissible under the law and there would be no prejudice caused to opposite parties in the event of petitioners being favoured with an opportunity to file a fresh written statement on their behalf, upon disregarding their previous written statement allegedly filed. Such issue could have been considered by the court below in aid of Section 151 C.P.C., for the absence of any specific provision in the Code permitting a person to file written statement afresh under a compelling circumstances, as mentioned hereinabove Mr. Basu argued.

Reliance was placed by Mr. Basu on a decision reported in AIR 2006 Supreme Court 1260 delivered in the case of Jet Ply Wood Pvt. Ltd. & Anr. Vs. Madhukar Nowlakha & Ors. with Biswarup Banerjee & Ors. Vs. Madhukar Nowlakha, to submit that in an appropriate case, where petitioners had been misled into making such submission of written statement on account of misrepresentation of the other side, there may be permission granted to file fresh written statement in aid of Section 151 C.P.C.

In the decision, referred above by Mr. Basu, a suit was allowed to be withdrawn, but without any liberty to file a fresh suit on the same cause of action. The petitioner subsequently filed a petition for recalling the said order, by which the suit had been permitted to be withdrawn on the ground that petitioner had been misled into making such application on account of misrepresentation of the other side. It was rejected by the Trial Court. High Court, however, allowed the prayer

permitting restoration of the suit, even after the same was withdrawn, which was upheld by the Apex Court.

Mr. Basu, while explaining such decision submitted that when Code of Civil Procedure is silent regarding procedural aspect, the inherent power of the court can come in its aid to act as *ex debito justitiae* for doing real and substantial justice between the parties.

Disputing with the submission of petitioners, Mr. Debjit Mukherjee learned advocate appearing for the opposite parties submitted that there had been no provision enacted in the Code of Civil Procedure permitting defendant to file written statement afresh upon disregarding previous written statement.

Mr. Mukherjee replied denying the alleged influence and misrepresentation, exercised by the opposite parties on the score that the relationship between the parties was strained from long before, which could be perceived from Title Suit No. 105 of 2000, filed by petitioners against opposite parties and appeal followed thereafter being F.A. No. 207 of 2002 of this Court, and in view of such hostile relationship, there had been no occasion developed for the petitioners to repose confidence upon the opposite party/plaintiff for getting their respective shares amicably in partition suit.

Mr. Mukherjee further contended that the written statement previously filed by petitioners on 16th February, 2016, was the true reflection of mind of petitioners to set up their respective defence, according to their own volition and choice, and the same should not be disregarded upon accepting a fresh written statement, when there is specific provision contained in the Code of Civil Procedure for amendment of written statement even.

Reliance was placed by Mr. Mukherjee on a decision reported in 2016 SCC OnLine Cal 4012 delivered in the case of Hari Charan Pal Vs. Dhananjay Ghosh & Anr., to submit that substitution of previous written statement even would not be automatic on prayer, unless sufficient circumstances are made out explaining reasons therefor.

Taking recourse to such decision, Mr. Mukherjee submitted that the previous written statement having filed by petitioners on 16th February, 2016, such prayer for furnishing fresh written statement upon disregarding the previous one would definitely cause delay to the suit. In the absence of plausible explanation being offered for filing such belated application, the court below had rightly rejected the prayer under Section 151 C.P.C.

Reliance was further placed on a decision reported in 1949 SCC OnLine Mad 172, delivered in the case of Kallampudi NARAYANAPPA Vs. Kaligotla SURYANARAYANA & Ors., that provision under Order 8 Rule 1 for filing written statement would not apply for substitution of a fresh written statement in the place of one filed already under Order 8 Rule 1 C.P.C.

Profit was further sought to be derived by Mr. Mukherjee from a decision

reported in 2008 SCC OnLine Cal 465 delivered in the case of Arijit Mittra vs. Goutam Mitter that the substituted defendant even cannot be permitted to file written statement, as the substituted defendant does not have any independent right to file a written statement, because substituted defendant merely steps into the shoes of the original defendant, unlike a person, who is added as party to a suit by virtue of an order under Order 1 Rule 10(2) C.P.C.

In view of such submissions advanced by both the parties to this case, together with materials placed including opposition filed by the opposite parties, this Court is called upon to return a decision, if a written statement may be directed to file afresh, upon disregarding a previous written statement of defendants, for the reasons disclosed in the petition under Section 151 C.P.C. or not.

The case of Mr. Basu, is relatable to a fundametal point of misrepresentation and undue influence, allegedly exercised by the opposite parties/plaintiffs upon petitioners (defendant nos. 1 and 2) in procuring their signatures on blank papers, and consequentially the written statement filed being misled, cannot be taken to be true reflection of mind of petitioners in putting up their best defence in written statement.

The ordinary relationship between the parties got strained long before the institution of suit, which would be evident from institution of Title Suit No. 105 of 2000, followed by appeal being F.A. No.207 of 2002. The existence of previous litigation between the parties is quite natural to develop a hostile relationship between the parties, for which there may not be any occasion for both the parties to repose confidence upon each other. Circumstances thus attended may not be considered without any doubt.

More so, full particulars of gathering knowledge by the petitioners about putting undue influence and misrepresentation upon them, could not be disclosed in the petition under Section 151 C.P.C.

Order 8 rule 1 C,P.C. enables defendant to present a written statement of his defence within the time period mentioned therein.

There may not be any controversy between the parties with regard to the settled proposition of law that the provisions of the Code are not exhaustive. When the Code of Civil Procedure is silent regarding a procedural aspect, the inherent power of court can come to its aid for doing justice to the parties.

Since, written statement is permitted to be filed once, as per provision laid down under Order 8 rule 1 C.P.C., for the peculiarity of circumstances mentioned in this case, substitution of earlier statement by new one is not permissible, for absence of any convincing plausible explanation being offered therein, particularly when relationship between the parties were uncommon in nature, and that too started long before, at least from the year 2000, when petitioners proceeded. to file suit against opposite parties/plaintiffs being T.S. No. 105 of 2000, which culminated in appeal being F.A. No. 207 of 2002.

This is a case, wherein written statement was filed by the petitioners on 16th February, 2016, meaning thereby prior to filing such written statement, the petitioners registered their appearance before the court below.

The last paragraph of the written statement of petitioners (defendant nos. 1 and 2) may be mentioned here, which is as follows: "Hence prayed for your Honour would be graciously pleased to adjudicate the share of these defendants in respect of the suit property considering the Deed of Settlement dated 17.09.1987 and Deed of Cancellation dated 24.03.2000 and/or to pass such other order/orders as your Honour deem fit and necessary for ends of justice."

A bare look to such paragraph would, however, reveal that petitioners also sought for adjudication of their shares in respect of the suit property, upon consideration of some documents mentioned in such paragraph. Therefore, whatever may be the narration of facts disclosed in the written statement, said to be a product of being misled, the ultimate prayer or object of the written statement is to have the legitimate shares of petitioners adjudicated in the suit property.

When contradictory statement is permitted to be admissible, as per settled proposition of law, and when there is sufficient provisions contained in the Code for causing amendment of the written statement, to have the desired defence being set up in the written statement, the provision of Section 151 C.P.C. may not be attracted in such circumstances.

For the reasons disclosed hereinabove, the revisional application does not call for any interference.

Accordingly, the revisional application stands disposed of.

This would not, however, prevent the petitioners from proposing amendment of the written statement in accordance with law.

Parties are directed to make communication of this order to the learned court below.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.