

(2014) 04 CAL CK 0080
In the Calcutta High Court
Case No : C.O. No. 3270 of 2013

Manoj Kumar Bhutoria and Others

APPELLANT

Vs

Debasish Banerjee alias Dr. Goutam Banerjee and Others

RESPONDENT

Date of Decision : 08-04-2014

Acts Referred:

Civil Procedure Code Amendment Act, 1999 — Section 16
Civil Procedure Code Amendment Act, 2002 — Section 16(2)(b)
Civil Procedure Code, 1908 (CPC) — Section 151, 17
Criminal Procedure Code, 1973 (CrPC) — Section 340

Citation : (2014) 04 CAL CK 0080

Hon'ble Judges : Asim Kumar Roy, J

Bench : Single Bench

Advocate : Sabyasachi Bhattacharyya, Mohammed Salauddin Mollah and Mr. Chandradoy Roy, Advocate for the Appellant; Sujash Ghosh Dostidar and Ms. Sankari Roy, Advocate for the Respondent

Final Decision : Allowed

Judgement

Asim Kumar Ray, J.—This revisional application is directed against the order dated March 7, 2013 and July 16, 2013 passed in Title Suit No. 62 of 1986 by learned Civil Judge (Senior Division), 7th Court, Alipore whereby an application giving clarification in reply to an order dated January 14, 2013 and an application praying for acceptance of the amended plaint filed by the plaintiffs/petitioners were rejected. Petitioners as plaintiffs filed Title Suit No. 62 of 1986 for specific performance and damages. Defendants/opposite parties entered appearance and are contesting the suit. During pendency of the suit plaintiffs/petitioners filed application under Order 6 Rule 17 of the CPC for substitution of petitioner No. 3 as the plaintiff No. 3 in place and stead of Bhutoria (India) Limited as the said company got amalgamated with the petitioner No. 3. The said application was allowed by an order dated July 10, 2007. The petitioners filed amended plaint on September 3rd, 2007. On February 14, 2012 the opposite party No. 3 filed an application u/s 340 of the CPC against the petitioner No. 1. On September 6,

2012 petitioners noticed some typographical errors and omissions in the amended plaint. The petitioners subsequently filed a corrected amended plaint, on October 5, 2012 an application was filed praying for acceptance of the said corrected amended plaint in place of the amended plaint filed on September 3, 2007. On October 5, 2012 the petitioner filed another application under Order 6 Rule 17 in the said suit praying for amendment of the plaint. In the mean time examination-in-chief and cross-examination of petitioner No. 1 by the opposite party No. 1 have been completed and cross-examination of petitioner No. 1 by the opposite party No. 2 has been partly done. On January 14, 2013 the Court passed an order directing the plaintiff No. 1 to clarify his status as it has been revealed from the record that the amended plaint has been verified by the plaintiff No. 1 but the record reveals that on earlier occasion one Manmal Bhutoria represented plaintiff No. 2 and 3 as the Director and Principal Officer verified the application. On February 14, 2013 petitioners filed an application clarifying the status of the plaintiff No. 1. The Court passed an order rejecting the application for clarification but there was no order regarding application for acceptance of the corrected amended plaint. On April 3, 2012 petitioners filed an application u/s 151 of CPC praying for review or reconsideration of the order dated March 7, 2013. On July 16, 2013 the Court passed an order rejecting the application for acceptance of corrected amended plaint filed on 5th October, 2012, application praying for review and application under Order 6 Rule 17 filed on October 5, 2012 were rejected. In this background this is the revisional application.

2. Mr. Sabyasachi Bhattacharjee, learned advocate appearing for the petitioner submits in the tune of the revisional application. It is his contention that the application under Order 6 Rule 17 of the CPC filed on 22nd March, 2007 praying for amendment of the plaint was allowed. That order was a final order. The petitioner filed the amended plaint. Subsequently it was noticed that the amended plaint had some typographical mistake. Petitioners filed application praying for withdrawal of the first amended plaint and acceptance of the second amended plaint. The Court observed that the amended plaint has been verified by plaintiff No. 1 but the record reveals that on earlier occasion one Manmal Bhutoria represented plaintiff No. 2 and 3 as Directors and signed on behalf of plaintiff No. 2 and 3 in the verification. The petitioner has clarified the status of petitioner No. 1 /plaintiff No. 1 and has stated that in the application dated March 22, 2007 (application under Order 6 Rule 17 CPC) it was stated that Manmal Bhutoria is dead. The said application was verified by petitioner No. 1 for self and for petitioner No. 2 and 3 as Directors. But the Court has rejected the clarification application, application under Order 6 Rule 17, the application for acceptance of corrected amended plaint, application for review and application under Order 6 Rule 17 filed on October 5, 2012. The order impugned may be interfered with and set aside.

3. Learned advocate appearing on behalf of the opposite parties has contended that first amended plaint differs with the second amended plaint. The error

appearing from the first amended plaint was not a typographical mistake. There was lack of due diligence on the part of the plaintiff at the time of filing first amended plaint. The opposite party filed an application u/s 340 of the Cr.P.C. against the petitioner No. 1. The cross-examination of PW1 has been completed. The amendment sought for at that stage cannot be allowed. Second amended plaint was filed to destroy the cross-examination and to defeat the petition u/s 340 of the Cr.P.C.. He has relied on decisions reported in J. Samuel and Others Vs. Gattu Mahesh and Others, , 2001 (3) CHN 584 (Life Insurance Corporation of India -vs- Mirta Lina Pvt. Ltd.) and 2013 (3) CLJ (Cal.) 269 (Faroja Bibi & Ors. - vs- Sk. Mustafa Ali & Ors.).

4. Mr. Bhattacharjee has contended that the decisions cited by learned advocate of the opposite party are not applicable in this matter and the contention of his learned friend of the other side regarding stage of filing of the amendment application shall not apply to in respect of any pleading filed before the commencement of Section 16 of the CPC (Amendment) Act, 1999 [Section 16(2) (b) of the CPC (Amendment) Act, 2002].

5. Perused the revisional application and annexure thereto. The submissions of the learned advocate of the parties have been meticulously recorded. Record speaks that on 22nd March, 2007 plaintiffs filed an application under Order 6 Rule 17 of CPC praying for amendment of the plaint. The schedule of amendment is quoted hereunder:

In the cause title of the plaint the name and address of the plaintiff No. 3 be deleted by replacing--

Lindsay Securities Limited,

A company within the meaning of the Companies Act, 1956 having its Registered Office at 9, Chapel Road, Hastings, Kolkata-700 022.

6. In the said application it was stated in para 5 that Manmal Bhutoria is dead. He was a Director and Principal Officer of the plaintiff company No. 2 and 3.

7. The application dated 22nd March, 2007 was allowed by an order dated 10th July, 2007. The said order is quoted below:

Both parties files hajiras. The petition under Order 6 Rule 17 CPC is taken up for hearing. Heard the learned lawyer for the both sides. Perused the petition. Considered and allowed as the petition is formal in nature and not to change the nature and character of the suit. Amend the cause title and note the register accordingly. Fix 31.7.07 for filing W.S. by the defendant no. 4 and 5 and filing amendment of the plaint.

8. The plaintiff filed first amended plaint. On February 14, 2012 opposite party No. 3 filed application u/s 340 of Cr.P.C. against the petition No. 1. The petitioners filed second amended plaint with an application praying for acceptance of the same with liberty to withdraw the first amended plaint. The

Court passed an order asking for clarification as to why the amended plaintiff has been verified by the plaintiff No. 1 on behalf of plaintiff No. 2 and 3 though the original plaintiff was verified by Manmal Bhutoria on behalf of plaintiff No. 2 and 3. The petitioners filed an application clarifying the matter. The Court did not accept the clarification observing that it has nowhere been transpired that the plaintiff has intimated the court about the death of the said Manmal Bhutoria who represented the plaintiff nos. 2 and 3 and that the clarification filed by the plaintiff is not clear and not acceptable.

9. The petition dated 22nd March, 2007 reflects that there is a specific paragraph indicating that Manmal Bhutoria has died. The clarification filed by the petitioner stating that the amended plaintiff was verified under the signature of plaintiff No. 1 for self and on behalf of plaintiff No. 2 and 3. Therefore, it is not the correct reflection of the judicial mind of the learned Court below that the petitioners nowhere stated about the death of Manmal Bhutoria inviting the attention of the Court. The application praying for amendment was considered by the Court as it was formal in nature. Therefore, we may presume that the Court on perusal of the said application and on going through paragraph 5 of the said application passed the said order allowing amendment. The amendment was formal in nature and it was the final order as it was not challenged. It may be recorded further that order dated 10th July, 2007 whereby application under Order 6 Rule 17 was allowed reflects that the Court has passed the said order after hearing both sides.

10. The second amended plaintiff certainly mismatch with the first amended plaintiff but it matches with the original plaintiff on those points which mismatch with the first amended plaintiff. The second amended plaintiff is practically the reflection of the original plaintiff barring amendment sought for by an application dated 22nd March, 2007 it was allowed by an order dated 10.7.2007. The first amended plaintiff certainly shows the carelessness of the learned advocate for which petitioners/plaintiffs suffers. It is judicious to make it in order to address the real issue in dispute.

11. Considering the aforesaid background the decisions cited by learned advocate of the opposite parties are not applicable to this matter. On the contrary, Section 16(2)(b) of the CPC (Amendment) Act, 2002 comes in aid in this matter regarding amendment which may be allowed after the evidence is recorded.

12. The order impugned are interfered with and set aside.

13. The learned Court below is directed to accept the second amended plaintiff giving liberty to the petitioners/plaintiffs to withdraw the first amended plaintiff. The petition under order 6 Rule 17 filed on October 5, 2012 being a formal one is allowed. Necessary note be given in the plaintiff.

14. The revisional application is allowed. The learned Court below is directed to dispose of the suit as expeditiously as possible without giving any unnecessary

adjournment to either of the parties. Urgent xerox certified copy of this order, if applied for, be giving to the parties on usual undertaking.