

(2016) 02 CAL CK 0136
In the Calcutta High Court
Case No : C.O. No. 4189 of 2015

Mritunjoy Ganguly

APPELLANT

Vs

H.N. Memorial Institution represented by its Members
Committee, Harinarayan Pande

RESPONDENT

Date of Decision : 22-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2016) 5 WBLR 279

Hon'ble Judges : Siddhartha Chattopadhyay, J.

Bench : Single Bench

Advocate : Mr. Anit Rakshit and Mr. Balaram Neogi, Advocates, for the Petitioner; Ms. Paramita Pal, Advocate, for the Opposite Party Nos. 11 to 16; Mr. Bhudeb Chatterjee and Mr. Basudeb Ghosh, Advocates, for the added Opposite Party

Final Decision : Allowed

Judgement

Siddhartha Chattopadhyay, J.—Challenging the order dated 19.08.2015, the defendant petitioner has preferred this revisional application learned Counsel appearing on behalf of the parties placed their respective submissions. Heard rival submissions of both parties. It appears to me that the entire fate of revisional application hinges on the legal issues. Factual aspect is almost immaterial.

2. For the purpose of clarifying the entire matter this Court is of the view that the relevant factors which are necessary for granting amendment is to be explained.

3. Amendment of pleadings as it stood prior to the enforcement of CPC (Amendment) Act, 1999 and CPC (Amendment) Act, 2002 is such "The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties." By virtue of the

amendment which has been given effect from 01.07.2002 a proviso has been added to the main section which runs thus "provided that no application for amendment shall be allowed after the trial has commenced unless, the Court comes to the conclusion that in spite of "due diligence", the party could not have raised the matter before the commencement of trial.

4. It was our common experience that parties interested in causing delay of the trial of the case used to misuse the provision by moving frivolous amendments and after rejection of the same used to knock at the door of the Higher Court which caused more delay in disposal of the cases before the District Courts. The new proviso has been added to the rule with certain riders so that amendment of pleadings should not be allowed mechanically.

5. It is pertinent to mention that if a plaint is provided with cryptic and inaccurate averments, by way of amendment the same can be cured. Besides that, it is general principles of law that Court should be liberal in allowing applications for amendment of the pleadings but that does not mean that the amendment can be claimed as a matter of right under all circumstances. If we read Order 6, Rule 17 as it stands today, it can be concluded that amendment can be done at any stage of proceeding if there is no deficiency to show "due diligence" and/or if there is only elaboration or amplification to facilitate the proceedings of a fact which is already contained in the pleading. Every nitty-gritty and hypertechnicality should not stand in the way of rendering administration of justice. Delay in drawing the attention of the Court certainly causes harassment to the adversary and in that case the lethargic litigant should be visited with penalty.

6. Under the proviso, no application for amendment shall be allowed after the trial has commenced, unless in spite of due diligence, the matter could not be raised before the commencement of trial. It is submitted, that after the trial of the case has commenced, no application of pleading shall be allowed unless the above requirement is satisfied. The amendment of Order 6, Rule 17 was due to the recommendation of the Law Commission since Order 6, Rule 17, as it existed prior to the amendment, was invoked by parties interested in delaying the trial. That to shorten the litigation and to speed up disposal of suits, amendment was made by the amending Act, 1999, deleting Order 6, Rule 17 from the Code. This evoked much controversy/hesitation all over the country and also leading to boycott of courts and, therefore, by the Civil Procedure Code (Amendment) Act, 2002, provision has been restored by recognising the power of the court to grant amendment, however, with certain limitation which is contained in the new proviso added to the rule. The trial is deemed to commence when the issues are settled and the case is set down for recording of evidence.

7. In the judgment reported in (2007) 5 Supreme Court Cases 602, Hon'ble Apex Court held that some sort of leniency would be given for amendment of the written statement because it stands on different footing. Hon'ble Apex Court held "a prayer for amendment of the plaint and a prayer for amendment of the

written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute the cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. In a case of amendment of a written statement the courts would be more liberal in allowing the application than that of a plaint as the question of prejudice would be far less in the former than in the latter. Moreover, in the event of allowing the amendment the other party can be compensated in money. Technicality of law should not be permitted to hamper the courts in the administration of justice between the parties.

8. So if it is found that for the purpose of bringing to the fore the real question in controversy between the parties in that case amendment should be allowed with cost.

9. Time and again, our High Court as well as Hon''ble Apex Court held that in the interest of effective of adjudication and to resolve the real controversy amendment should be allowed if it does not cause serious injustice to the other side.

10. In the reported decision (2002) 2 Supreme Court Cases 2, our Hon''ble Apex Court held "it is almost inconceivable how mere amendments of pleadings could possibly cause failure of justice or irreparable injury to any party. The converse is possible i.e. refusal to permit the amendment sought for could in certain situations result in miscarriage of justice. After all, amendments of the pleadings would not amount to decisions on the issue involved. They would only serve advance notice to the other side as to the plea, which a party might take up. Therefore, it is not possible to envisage a situation where amendment of pleadings, whatever be the nature of such amendment, would even remotely cause failure of justice or irreparable injury to any party."

11. Learned Court below actually lost sight of that legal position that if any amendment sought for in connection with any suit filed before amendment of CPC, in that case provision of Order 6, Rule 17 as it existed at that time be followed and not the amended provision of Order 6, Rule 17 . Here the original suit was filed before the 1st Munsif, Alipore bearing Title Suit No. 403 of 1997 and, thereafter, it was sent to the Court below Civil Judge, (Senior Division), 1st Court bearing Title Suit No. 7 of 2005. Therefore the provision of Order 6, Rule 17 as it existed prior to the amendment of CPC of 2002, shall be followed.

12. At the same time, time and again Hon''ble Apex Court held that belated amendment can be allowed but sufficient cost has to be paid. On perusal of the record that the learned Court below had only awarded a cost of Rs. 100 for taking the application of Order 6, Rule 17 for consideration. But this Court wants to impose cost of Rs. 22,500 to be paid by drafts within a month from the date of this order failing which he cannot adduce evidence in respect of the amendment. The learned Court below is hereby directed to insist upon the petitioner/

defendant to pay the said sum by draft within this stipulated period and, thereafter he shall proceed with the case in accordance with law. I make it clear that it is peremptorily incumbent upon the defendant/petitioner to pay the amount of Rs. 2,500 by Bank drafts individually to Plaintiff Nos. 1 to 9. If the said amount is deposited within the stipulated time, order passed by the learned Court below shall not be given effect to otherwise, learned Court below will act upon his own order. The order dated 19.08.2015 is hereby set aside on above stated grounds.

13. Let a copy of this order be sent to the learned Court below for his information and taking necessary action in accordance with law.

14. Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.