

(1998) 04 CAL CK 0037

In the Calcutta High Court

Case No : Civil Revisional Jurisdiction C.O. No. 195 of 1997

Shri Suraj Kumar Jain

APPELLANT

Vs

Shri Ashok Kr. Roychowdhury and Others

RESPONDENT

Date of Decision : 28-04-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 8 Rule 9, 115, 151

Citation : (1998) 3 CALLT 135

Hon'ble Judges : Sidheswar Narayan, J

Bench : Single Bench

Advocate : Mr. Deepak Kr. Singh, for the Appellant; Party in Person, for the Respondent

Judgement

S. Narayan, J.—This revisional petition is directed against the order dated 18.12.96 passed in Title Suit No. 73 of 1983. whereby the learned Munsif, 4th Court, Alipore rejected the defendant-petitioner's prayer under Order 6 Rule 17 read with section 151 of the CPC, seeking amendment in the written statement by way of introducing certain paragraphs afresh in the original written statement.

2. Whereas, it is true that a Court of Law is authorised by provision of law under Order 6 Rule 17 of the CPC to alter or amend the pleadings of a party, which may be deemed necessary for the purpose of determining the real question in controversy between the parties, it does lie within the discretion of the Court to look into the bona fide behind such prayer for amendment and also to ensure that a point already set at rest by a High Court is not flouted. The instant case was one, which had a very chequered career during the long pendency of about 14 years before the trial court. A history of the procedure through which the trial has proceeded so far is needed to be looked into for a better appreciation of the challenge as thrown in the instant revisional petition.

3. The suit have been instituted in the year 1983 was put on the list of pre-emplory hearing in the month of December, 1987 and prior to that the defendant-petitioner had not only filed the original written statement as long back as on

29.4.85 rather he did file an additional written statement as well on 18.7.87 and (hat was accepted for the purpose of trial. Even though the trial had commenced in December, 1987 on a pre-emptory list, the matter once came up before this court in revisional jurisdiction and while disposing the revision being C.O. No. 856 of 1995, this court [with N. K.. Bhattacharyya, J) directed that the munsiff shall expedite the hearing of the suit at an early date. Thereafter the evidence of PW-1. being examined on behalf of the plaintiff O.P. was concluded on 3.5.96 and the suit was adjourned to 16.5.96 to commence with the evidence of the defendant-petitioner i.e. Dw-1 but. prior to that, the defendant-petitioner filed an application dated 10.6.96 under Order 8 Rule 9 of the CPC for admitting additional written statement so as to introduce some more additional plea on the record. The prayer as such, was, however, rejected by the learned trial court by an order dated 21.6.96 and. thereupon, the defendant-petitioner preferred a revision before this court which was numbered as C.O. No. 1987 of 1996. This revisional petition failed and was dismissed by an order dated 17.9.96 passed by this court (with Basudev Panigrahi, J). Soon thereafter, the defendant-petitioner filed another application dated 4.10.96 with a caption under Order 6 Rule 17 of the CPC but almost with the same prayer to amend the plaint by introducing the additional plea as were earlier sought to be introduced through a petition dated 10.6.96 under Order 8 Rule 9 of the CPC. This time again, the learned trial court rejected the prayer by the impugned order dated 18.12.96 and, hence, was the necessity for the defendant petitioner to again come up before this court.

4. Now, at this juncture it may be pointed out that the plaintiff-O.P. had filed the suit-in-question for declaration and permanent injunction as also for recovery of khas possession and compensation. After once having filed an original written statement and, subsequently, also having been permitted to file additional written statement prior to the commencement of the hearing, the defendant-petitioner was making effort by hook or crook to introduce some additional plea to set up counter claim. Be that as it may. It has been noticed from the history of the chequered career of the instant suit that the prayer of the defendant-petitioner to set up some additional plea has already been rejected by an order dated 21.6.96 of the learned trial court and the same was practically affirmed by this court by way of dismissing the revisional petition, being C.O. No. 1987 of 1996. by an order dated 17.9.96. Since the defendant- petitioner did not choose to go for review of the said order by this court nor did he prefer any appeal/ revision before the Supreme Court, the order dated 17.9.96 passed by this court would most certainly be deemed to be final.

5. I have been taken through the prayer of the defendant-petitioner in both of his applications dated 10.6.96 and 4.10.96, of course with different nomenclature but for the same additional facts sought to be introduced in his written statement either by way of an additional written statement or by way of amendment introducing those facts in the original written statement. The prayer, in sum and substance, was the same and, therefore, the point, which has been set at rest by an order dated 17.9.96 by this court passed in C.O. No. 1987 of

1996, cannot be allowed to be re-agitated. In this view of the matter. I do not feel inclined to interfere with the impugned order whereby the prayer for amendment by way of introducing new facts in the written statement at a belated stage was rejected.

6. Apart from what has been seen above, a court of law ought not to over look the blatant conduct of a party to delay the disposal of the suit which has been noticed in the instant case. The record also depicts lack of bona fide on the part of the defendant-petitioner, which was resulted into the longer pendency of the suit-in-question.

7. For the reasons aforesaid, this revisional petition is devoid of merit and, accordingly, it is dismissed. There shall however, be no order as to costs.

8. Petition dismissed