

In the court of Sub Judge – I, Patna City

T.S. - 10/18

Order

14-03-22

A petition u/o 6 rule 17 r/w 151 CPC is filed on behalf of defendant praying amendment in written statement. Learned advocate on behalf of defendant has submitted that plaintiff has filed this suit for specific performance of contract for sale on the basis of alleged agreement for the sale dated 29.03.2017, alleged to be executed by defendant. It is further submitted that defendant could not give proper information to conducting lawyer due to some mental problem and some important fact essential to matter is controversy could not be incorporated in the written statement and the facts are only explanation of the averments that already been incorporated in the written statement and amendment sought is simple in nature and will not change ambit and scope of the suit. It is also submitted that there is no undue delay with regard to amendment sought.

A rejoinder dated 14.03.2022 is filed on behalf of plaintiff wherein learned advocate has submitted that the amendment petition by defendant is not maintainable as the case is posted for plaintiff's evidence and that plaintiff has produced six witnesses, out of which defendant intentionally did not cross examine two plaintiff witness. It is also contended on behalf of plaintiff that defendant has also not file document with regard to mental problem of defendant as claimed in para 3 of the amendment petition. It is further submitted that amendment in para 3 of written statement and addition para 9(A) & 4(A) is also objected as the amendment sought, will change the nature of the suit and same is not maintainable in the eye of law. Accordingly, it is prayed the amendment petition filed by defendant may be rejected.

Heard both parties and perused the record. It transpires that plaintiff has brought suit for specific performance for contract of sale against the defendant and record is pending for evidence on behalf of the defendant. It also transpires that defendant has sought amendment under order VI rule 17 read with section 151 CPC on three counts wherein new paragraph 4(a), 9(a) is sought to be added. Also heard argument on behalf of both parties. Learned advocate on behalf of plaintiff has contended that the proposed

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amendment will change the nature of suit but the learned advocate on behalf of plaintiff has failed to satisfy the court as to how the proposed amendment in written statement is likely to change the nature of the suit. From perusal of the record it also transpires that defendant has failed to file any document with regard to mental conditions of defendant as contended by defendant.

In B. K. Narayana Pillai Vs. P. Pillai (2000) 1 SCC 712 Hon'ble Supreme Court has ruled that a more liberal approach needs to be taken by allowing amendment to written statement rather than a plaint, as chances of prejudice may be more in the latter case :- Further Hon'ble Court observe in above case as :-

“The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendment of the written statement as question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment, other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original was raised or defence taken. The delay in Filing the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement.”

Further, in the case of Baldev Singh Vs. Manohar Singh (2006) SCC 498. Hon'ble Supreme Court has observed as under :-

“Inconsistent pleas can be raised by defendants in the written statement although the same may not be permissible in the case of plaint.”

Further Hon'ble Supreme Court in the case of Usha Balasahed Swami Vs. Kiran Appaso Swami (2007) 5 SCC 602 has ruled that :-

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"The case of amendment of a written statement, the courts are more liberal in allowing an amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case."

Further, Hon'ble court held that it is settled law open to a defendant to take even contrary stands or contradictory stands, the cause of action is not in any manner affected. That will apply only to a case of the plaint being amended so as to introduce a new cause of action. Further, Supreme Court held that in allowing the amendment of the written statement a liberal approach is a general view when admittedly 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."

Now applying the principles laid by Hon'ble Supreme Court with regard to amendments in written statement to the present in the facts and circumstances of the case. The court is of opinion that the amendments sought in written statement are not as such as to change the nature of the suit and it also appears to be necessary for decision of real controversy between the parties in the suit. On the other hand, the court is also of opinion that there has been some delay in filing of amendment petition by defendant as record is posted for defendant evidence. In Andhra Bank Vs. A.B. N. Amro Bank, AIR 2007 SC 2511 wherein Hon'ble Supreme Court has ruled that delay is no ground for refusal of prayer for amendment of written statement. The only question to be considered by court is whether such amendment would be necessary for decision of the real controversy between the parties in the suit and here the court can not go into question of merits of the amendment. Applying the above principle laid by Hon'ble Supreme Court to present fact and circumstances of the case, this court is of opinion that it would be in interest of justice to allow the amendment petition of defendant under order VI rule 17 read with section 151 CPC. Accordingly, defendant's amendment petition dated 08.04.2021 is hereby allowed at the cost of 1000/- Rs. to be given to plaintiff. The said amendment will come into existence after deposition of cost. The defendant is directed to deposit the cost of RS. 1000/- Rs. within one month. *put up on - 25.4.22*

Dictated

B 14/03/22
Sub Judge - I