

COMMERCIAL COURT AT ASANSOL

**(FOR THE DISTRICTS OF MURSHIDABAD, BIRBHUM, PURBA
BARDHAMAN, PASCHIM BARDHAMAN, PURULIA AND BANKURA)**

Present :- Shaikh Kamal Uddin.
 Judge, Commercial Court at Asansol.

JO Code :- WB01311.

Commercial Suit No. : 02/2023

CNR No. : WBBD17-000006-2023

Defendant/ Petitioner :- Sri Smriti Bikash Bhattacharjee.

V/s

Plaintiff / Opposite Party :- Ghar Housing LLP.

Order No. 10

Dated – 15.12.2023

Today stands fixed for passing order on the application under Order 6 Rule 17 read with section 151 of the CPC filed by the plaintiff / petitioner being I.A No. 05 of 2023 dated 17/03/2023.

The plaintiff / petitioner has come up with the present application under Order 6 Rule 17 of the CPC seeking amendment of the plaint by adding paragraph 19 and also seeks to amend the prayer portion.

Written objection has been filed by the defendant against the application for amendment.

The Learned Advocate for the plaintiff / petitioner submitted that the facts which are being sought to be incorporated in the plaint are material for the proper adjudication of the suit and that the same will neither change the nature and character of the suit nor prejudice the defendants.

Per contract, it has been submitted by the Learned Advocate for the defendant that he has no objection if paragraph 19 is allowed to be added after paragraph 18. He however submitted that so far as the amendment to the prayer portion is concerned the same cannot be allowed as that will tantamount to usurp the jurisdiction of the executing court.

Contd/...(P/2)

I have heard the Learned Advocates for the parties.

So far as the prayer for adding paragraph 19 is concerned, the same in my considered view if allowed to be added will not change the nature and character of the suit. That apart the defendant has not raised any objection to the prayer for addition of paragraph 19. The same is accordingly allowed.

In the prayer portion the plaintiff wants to add the following:-

‘[and (iii) to allow the plaintiff comments and complete the development project as per provisions of the development agreement dated 22.10.2019 and to perform all other obligations agreed / undertaken to be performed by the defendant under the said agreement in respect of the project upon the A schedule land within the time fixed by this Learned Court, and in case of failure by the defendant to do so within such time, the same be got done through the process of this Learned Court.]

The plaintiff therefore wants to incorporate a prayer to the effect that in the event of failure to perform some direction which may be passed against the defendant, the same should be done through the process of this court. The last portion of the prayer in my considered view is a function of the executing court and therefore this court cannot usurp the jurisdiction of the executing court and accordingly the same cannot be allowed to be incorporated by way of amendment. Therefore the amendment of the prayer portion except the words ‘and in case of failure by the defendant to do so within such time, the same be got done through the process of this Learned Court.’ is allowed. The amendment application being I.A No05 of 2023 dated 17/03/2023 is disposed of accordingly. The plaintiff is directed to file the amended copy of the plaint within a fortnight from date.

D/C by me.

**Judge, Commercial Court
At Asansol**

**Judge, Commercial Court
At Asansol**

Later
Dated – 15.12.2023

Both sides filed hazira.

Learned Advocate for both the parties are present.

The matter is taken up for further hearing of the temporary injunction application.

The Learned Advocate for the defendant submitted that he does not want press the written objection against the application under Order 39 Rule 1 & 2 and filed on 28/07/2023. He further submitted that liberty be given to the defendant to file the written objection a fresh incorporating all relevant documents.

No objection is raised by the Learned Advocate for the plaintiff.

Accordingly, the Learned Advocate for the defendant is permitted to 'not press' the written objection filed on 28/07/2023. The fresh written objection against the application under Order 39 Rule 1 & 2 filed by the defendant today along with all relevant documents is taken on record. Learned Advocate for the plaintiff submitted that since voluminous documents have been annexed with the objection, he requires some time to go through it and the Learned Advocate also prayed that the plaintiff should be given an opportunity to file re-joinder to the written objection.

Prayer is allowed. The Learned Advocate for the plaintiff also prayed for extension of the interim order. Prayer is considered and allowed. The interim order is extended till the next date of hearing. I.A No.13 of 2023 dated 15/12/2023 accordingly stands disposed of.

Fix **25/01/2024** for further hearing of the temporary injunction. In the meantime, the plaintiff is at liberty to file re-joinder.

D/C by me.

Judge, Commercial Court
At Asansol

Judge, Commercial Court
At Asansol