

Title Suit 916 of 2020
CNR No. WBCC01-3036-2020

Present: Sri Subhash Kumar Kar, Judge, Bench-V (WB00592)

Order No. 19/ Dated 05.02.2024

Parties have taken the respective steps.

The date is fixed for order on the petition dated 08.06.2023 under Order VI Rule 17 of the C.P.C.

The learned Advocate for the plaintiff submitted to not press the petition dated 08.06.2023 and prays for hear the petition dated 25.01.2024 under order VI Rule 17 of the C.P.C.

Following his submission the petition dated 08.06.2023 under Order VI Rule 17 of the C.P.C stands rejected being “not pressed”.

Fix 06.03.2024 for hearing of the petition under order VI Rule 17 of the C.P.C. dated 25.01.2024

W/O, if any in the meantime.

D/c by me,

Judge.

Judge, Bench-V,
City Civil Court, Calcutta.

Title Suit 916 of 2020
CNR No. WBCC01-3036-2020

Present: Sri Subhash Kumar Kar, Judge, Bench-V (WB00592)

Order No. 22/ Dated 03.05.2024

Parties have taken their respective steps.

The date is fixed for order.

P.O. is busy with other record.

Fix 06.05.2024 for order.

Judge, Bench-V
City Civil Court, Calcutta.

Order No. 23/ Dated 06.05.2024

Parties have taken their respective steps.

The date is fixed for order on the petition under Order VI Rule 17 of the C.P.C filed by the plaintiff with the proposed amendments of the plaint.

Both sides were heard at length on the petition 19.04.2024 and today it is fixed for order.

This application is made by the plaintiff on the premises that certain bonafide mistakes were made on the part of the previous Lawyer while drafting the plaint and some significant documents were omitted owing to inadvertence which emerges the necessity to amend the plaint with the proposed amendments mentioned in the schedule of the plaint.

The defendant has filed written objection to the said application by denying and disputing the contentions raised by the plaintiff in the said application and it is stated that the amendments sought to be incorporated are not formal in nature and if the said amendments are allowed it will cause prejudice to the defendant.

At the time of submission, Ld. Advocate appearing for the plaintiff submitted that the proposed amendments are necessary for proper adjudication of the dispute raised in this suit and the amendments are formal in nature and if allowed those shall change the nature and character of the suit and it is prayed to allow the said petition.

The Ld. Advocate appearing for the defendant submitted that all the facts introduced in the proposed amendment were not the fall out of any subsequent event and at this stage the said amendment if introduced shall cause prejudice to rights and entitlement of the defendant and it is prayed to dismiss in limini with exemplary cost.

In support of his submission he cited one decision reported in (1949) SCC Online Mad 167

It is the established principle that at the time of adjudication of any petition under Order VI Rule 17 of the C.P.C the court cannot look into the correctness of the amendments sought for.

In the instant case, it is the case of the plaintiff that those facts could not be introduced due to the bonafide mistakes and on the other hand it is the counter contention of the defendant that the plaintiff opted to suppress those facts at the time of filing of the suit and after the defendant has filed the written statement they opted to introduce those facts by way of amendments only to fill up the lacuna of the plaint.

I have gone through the judgement cited by the Ld. Advocate of the defendant and in the said judgement Hon'ble Court held that the new set of fact has been set up by way of amendment which cannot be allowed under the law.

I have gone through the proposed amendments and excepting the amendment sought to be introduced in paragraph 37A, all other proposed amendments relate to subsequent development after filing of this suit and it is clearly mentioned in paragraph 37D of the proposed amendment that the documents mentioned in item nos. 1 to 5 were not in the possession of the plaintiff when the suit was filed and thus, excepting the proposed amendment in paragraph 37A of the plaint, I do not find any impediment in allowing the other proposed amendments as the trial has not been commenced and there is no chance of causing prejudice to the rights and entitlement of the defendants and those amendments if allowed to be introduced shall not change the nature and character of the suit.

Hence, it is

ORDERED

that the instant petition under Order VI Rule 17 of the C.P.C is allowed in part and the leave is granted to the plaintiff to amended the plaint with the proposed amendments mentioned in paragraph 37B to 37E of the schedule of the petition with a direction to comply the provision of Order VI Rule 18 of C.P.C.

However, defendant is at liberty to file the additional written statement, if any, after submission of the amended copy of the plaint.

Fix 21.05.2024 for filing amended plaint.

D/c by me,

Judge.

Judge, Bench-V,
City Civil Court, Calcutta.