

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 on the petition under Order VI Rule 17 of the C.P.C filed by the plaintiff with the proposed amendment 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 that the certain bonafide mistake 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 of amend the plaint with the proposed amendment mentioned in the schedule of the plaint.

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

At the time of submission the 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 cannot 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 caused prejudiced to rights and entitled and it is prayed to dismissed in limini with exemplary cost.

In support of his submission he cited on decision reported in .1949 SCC Online Mad 167

It is further submitted that the suit has been brought by suppressing all those facts which are describing in the proposed amendment and at this stage those cannot be allowed to fill up the lacuna of the plaintiff.

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

In the instant case, it is the case of the plaintiff that those facts could not be introduced due to the bonafide mistake 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 fact by way of amendment only to fill up the lacuna of the plaintiff.

I have gone through the judgement cited to 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 amendment accepting the amendment sort to be introduced in paragraph 37A and all other proposed amendment fixed about subsequent development after filing of this suit and it is clearly mentioned in paragraph 37D of the proposed amendment that the document mentioned in item nos. 1 to 5 were not the possession of the plaintiff when the suit was filed therefore excepting the proposed amendment of paragraph 37A of the plaint, I do not find any impediment in allowing the other proposed amendment as the trial has not been commenced and there is no chance of causing prejudice to the rights and entitlement of the defendants in the event of of allow propose amendments in paragraph 37B to 37E and those amendments if introduce 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 mentioned from 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 17.05.2024 for filing amended plaint.

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. 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. 27/ Dated 12.07.2024

Parties have taken their respective steps.

Date is fixed for order on the petition dated 15.05.2024 filed under Section 151 of C.P.C with the prayer for modification of the Order no. 23 dated 06.05.2024 on the ground that proposed amendment in paragraph 37(B) to 37(E) were expressly allowed in the said order but nothing was said regarding the remaining paragraph from 37(F) to 37(P) of the amendment application and also the other clauses mentioned in (b) and (c) in the schedule of the amendment petition.

Defendant has filed one written objection against the said application stating that once an amendment is allowed, no modification can be done and if the plaintiff is agreed with the order, the only remedy available to the plaintiff is to move the Hon'ble court in the revisional jurisdiction.

Contd...Order No. 27/ Dated 12.07.2024

Heard both sides on the petition at length on 11.06.2024 and today it is taken up for order.

On perusal of the order dated 06.05.2024, it appears that in the preceding paragraph of the operating part of the order, it was observed that except the proposed amendment of paragraph 37(A) of the schedule of the petition, there was no impediment for this court in allowing the other portion of the amendments which means that the court had considered all the proposed amendments mentioned in the schedule of the petition and was of the opinion that except the amendment proposed in paragraph 37(A) all other proposed amendments can be allowed. But in the operating portion only the amendment mentioned in paragraph 37(B) to 37(E) were allowed either due to the typographical mistake or in advertence due to other reason.

Therefore, I do not find any impediment in allowing the prayer for modification of the order dated 06.05.2024.

Hence, it is

ORDERED

that the instant petition 151 is allowed and the Order no. 23 dated 06.05.2024 is modified to the extent that the leave is granted to the plaintiff to amend the plaint with the proposed amendment mentioned in para 37(B) to 37(P) along with the proposed amendment mentioned in clause (b) and (c) of the schedule of the amendment petition.

The rest portion of the Order no. 23 dated 06.05.2024 shall stand as it is.

Fix 29.07.2024 for filing amended plaint.

D/c by me,

Judge.

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