

T.S. - 725/14 CNR – WBCC0103517-2014
Present: Sri Jayanta Koley, Judge, Bench-II. (WB00562)

Order 71
24.9.24

Today is fixed for hearing of the application u/o 6 Rule 17 read with section 151 CPC dtd 25.4.24 filed by the plaintiff.

Both the sides file haziras. Heard the Ld. Advocates for both the sides at length.

Perused the application, whereby the plaintiff has prayed for passing necessary order to amend the plaint in the manner indicated in schedule to the said application mainly intending to rectify the wrong description of the suit property as mentioned in the schedule to the plaint as well as to correct certain typographical mistake / omission in the body of the plaint.

The defendant has resisted and contested the said application by filing a WO denying all the material allegations contained therein and has prayed for rejection of the same mainly on the score that the same has been preferred at a very belated stage after closure of recording of evidence of both the sides and after completion of argument advanced from the side of the defendant as well as on the ground that the same has been preferred only to fill up the lacuna in the case of the plaintiff and if the same is allowed the defendant will be deprived of his legitimate right accrued in this suit.

During the course of hearing the Ld. Advocate for the defendant does not raise much objection against the proposed amendment so far as it relates to rectification of typographical mistakes / omissions in the body of the plaint. However he raises vehement objections against the rest portion of the proposed amendment assigning mainly the reason that such amendment after commencement of trial is not permissible in view of the proviso to Order 6 Rule 17 CPC while such amendment has been sought for only to deprive the defendant of his legitimate right already accrued on account of lacuna on the part of the plaintiff.

However upon careful comparison of the proposed amendment with the contents of the plaint it appears that both are quite commensurate with each other and if allowed there will be no change in the nature or character of the suit in any manner. It is also evident from the cross examination of DW 1 dtd 5.9.22 that he is very much aware about the extent and description of the suit premises which is under his occupation and wherefrom his eviction has been sought for in this suit. The proposed amendment so far as it relates to providing proper and correct description as well as extent of the suit premises is concerned, it is explicit that the plaintiff is intending to amend the schedule of the plaint in accordance with the description and extent of the suit premises under occupation of the defendant as disclosed by DW 1 in his cross examination on 5.9.22. In view of such finding, it is obvious that unless the proposed amendment as sought for is allowed to be incorporated in the plaint there is every possibility of cropping up of unnecessary complications and / or confusions at the time of delivery of judgment which may in all probability give rise to multiplicity of proceedings involving unnecessary loss of time, energy and money which is not at all desirable and that apart the same is also required to avoid possible complications at the stage of execution in the event the suit is decreed.

In this regard it has been observed in connection with amendment of plaint in final stages of suit in the context of incorrect description of suit property in plaint by the Hon'ble Apex

Court in the reported decision of 2005(13) SCC 89 ‘ *that proposed amendment was necessary for the purpose of bringing to the fore the real question of controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution in the event of plaintiff – appellant succeeding in the suit* ’.

Even in connection with amendment of decree for wrong description of property when such mistake was subsequently discovered after passing of the decree, the Hon’ble High Court at Calcutta was pleased to reject the revisional application preferred against the order of the Executing Court regarding amendment of plaint and correction of decree with the observation ‘ . . . *otherwise the decree holder will be deprived from the fruits of litigation . . .* ’

Having regard to the factual scenario and keeping in mind the ratio of the aforesaid decisions, I am of the considered opinion that the present application for amendment is very much necessary for proper disposal of the disputes involved between the parties in this suit and if the same is allowed no prejudice will be caused to the defendant, who will get chance to file his additional WS. However at the same time it is felt that on account of the inordinate delay on the part of the plaintiff in coming up with the prayer for amendment, the defendant is to be compensated adequately.

Hence it is

Ordered

that the application of the plaintiff u/o 6 Rule 17 read with section 151 CPC dtd 25.4.24 is hereby allowed on contest treating the said application to be a part of the plaint subject to payment of cost of Rs. 5000/- to the defendant by 10.1.25.

After payment of such cost the plaint will be amended when the plaintiff will be required to file amended copy of plaint after serving copy thereof upon the defendant who will be at liberty to file additional WS if any thereafter.

D/C by me

Judge

Judge 2nd Bench