

Title Suit 3 of 2022

Order No. 16 Dated:04.06.2024

Today is fixed for passing order in respect of the application under 6 Rule 17 of CPC.

Ld. Advocate for the defendant submitted that at the time of filing of the written statement the defendant failed to disclose some true facts which are not incorporated in the WS and mentioned in the schedule of the petition. The mistake is totally bona fide mistake. The defendant submitted that Eraj Box the father of the defendant was the sole tenant in respect of the suit property and he died leaving behind two sons and five daughters. After his death both his sons became the joint tenant, so one of his son is also the necessary party to this suit. The plaintiff received a sum of Rs.90000/- from the defendant by assuring the defendant that the shop room will be transferred in his favour by dint of registered deed of sale but no step has been taken by him by the plaintiff till date.

This is the fact which the defendant wants to insert by way of amendment in the written statement. If it is not inserted then the real controversy in dispute will not be determined. This amendment will not change the nature, character and cause of action of the suit. The amendment proposed is formal in nature.

Hence the defendant prays for amendment of the plaint as per the schedule mentioned in the petition.

Ld. Advocate of the plaintiff raise vehement objection stating that it will change the nature and character of the suit. The proposed amendment is all denied by the plaintiff.

Heard. Considered.

After perusal of the record and the petition it is seen that the proposed amendment is regarding mentioning about some facts which were left out from the written statement at the time of its filing. The suit at its initial stage, no issues have been framed yet. The fact which has been mentioned by the defendant relates to the suit property.

In **Rajesh Kumar Agarwal and ors. vs K. K. Modi and ors.** it has been observed that the court can allow the amendments which is necessary for the purpose of determining the real questions in controversy between the parties. It can be said that if the relief which could be prayed for in the new suit can also be permitted to be incorporated in the pending suit. The proposed amendment is very much formal in nature and if it is incorporated it will not change the nature and character of the suit.

Thus, considering the nature of the amendment, the stage of the instant suit and to determine the real question in controversy between the parties and also for the ends of justice the amendment sought for should be allowed. So, this Court is inclined to allow the amendment of the plaint as per the schedule mentioned in the petition.

Hence, it is

ORDERED

that the petition U/O 6 Rule 17 be and the same is hereby allowed and disposed of on contest without any cost. The defendant is allowed to amend the written statement as per the schedule of the present petition. The defendant is also directed to file the amended written statement within 14 days accordingly.

To 15.07.2024 for filing of the amendment written statement.

Dictated & corrected by me

CJ

**Civil Judge (Jr.Div.)
Amta, Howrah**