

48/17.08.2017

The record is taken up for order in respect of petition under order 6 rule 17 of C.P.C. The petitioner has filed this petition and prays for amendment of plaint. The petitioner stated that due to typographical mistake, some omission has been caused in the plaint filed by the petitioner which is very much necessary to correct the same by filing this amendment petition. The petitioner also stated in his petition that the said mistake was detected at the time of evidence of O.P.W 1 and it is unintentional laches on the part of the petitioner. So, the petitioner prays for amendment of plaint as mentioned in the schedule of the petition.

The O.P has filed written objection and denied all the material allegations contained in the petition. The O.P has stated in his objection that evidence of the petitioner as well as evidence of D.W1 almost completed and if the amendment be allowed at this stage, then the nature and character of the petition would be changed, so O.P has prayed for rejection of the petition.

The petitioner relied upon the decisions reported in 2017(2)ICC 561 (S.C.) and 2016(3)ICC 363 (Pb & Hry.).

On the other hand, the O.P relied upon the decision reported in AIR 2006 Supreme Court 2832

I have gone through the said decisions. Hd submissions of both sides.

I have perused the plaint, w.s and other materials on record.

After perusing the petition, I am of the opinion that if the petition be allowed, then the very nature of the suit shall not be changed. The petitioner also filed plaint of T.S.243/2001 (Xerox Copy) which was filed in the Court of Civil Judge (Sr. Dvn), 2nd Court, Barasat. From the said plaint, it appears that the petitioner rectified the said omission and mentioned the relation which the petitioner sought for amendment. It is true that the petition has been filed in a belated stage at the time of examination of witness of O.P.

The Hon'ble Supreme court held in a decision reported in 2017(2)ICC 561 (SC) that in appropriate cases, the parties are permitted to amend their pleadings at any stage not only during the pendency of the trial but also at the first and second appellate stage with the leave of the Court provided the amendment proposed is bonafide, relevant and necessary for deciding the rights of the parties involved in the suit. After going through petition, objection and other materials on record, my considered view is that if the amendment be allowed, it does not change the basic nature of the suit. So, in order to determine the real controversy between the parties and to avoid multiplicity of the suit, the present petition is required to be allowed. I also make it clear that belated amendment can not be refused to decide real

controversy between the parties. The amendment which is sought for is bonafide and there is no intentional laches on the part of the petitioner.

Hence,

it is ordered

that the petition under order 6 rule 17 of C.P.c is allowed on contest subject to the payment of cost of Rs.500/-. The petitioner is directed to file the amended plaint within fortnight. The opposite party is at liberty to file additional W.s.

Fix 31.08.2017 for filing amended plaint and additional W.s and payment of cost.

D/C by me.

A.D.J. 1st Court, Barasat

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