

Ejectment Suit 68 of 2024.

[ CNR No. WBPS01 000139-2024 ]

Before - Ashutosh Kumar Singh- Ld. Chief Judge.

06.

30-09-2024.

Today is fixed for hearing of petition u/o-VI Rule 17 read with Section 151 of C.P Code filed by the plaintiff dt 06-07-2024, w/o if any in the mean time with observation that the petition u/s 7(2) of W.B.P T Act filed by the defendant shall be taken into consideration after the disposal of the petition u/o-VI Rule 17 read with Section 151 of C.P Code filed by the plaintiff dt 06-07-2024,

Both parties file haziras.

Defendant files Written Objection against the petition u/o-VI Rule 17 read with Section 151 of C.P Code filed by the plaintiff dt 06-07-2024.

Copy served. Objection noted.

Parties are present on call.

The petition u/o-VI Rule 17 read with Section 151 of C.P Code filed by the plaintiff dt 06-07-2024 is taken up for hearing.

By filing the instant application, plaintiff has prayed for amendment of the plaint as per schedule mentioned in the application on the ground that due to oversight and miscommunication between the plaintiffs / petitioners with their Ld. Advocate, in page-04, paragraph 5(a) of the plaint, it has been wrongly mentioned that the "defendant is a habitual defaulter in payment of rent since the month of October 2023" which ought to have been "defendant is a habitual defaulter in payment of rent since the month of October 2022" .

The said error requires to be removed and new fact is required to be incorporated in the plaint.

Ld Advocate for the plaintiff at the time of hearing prayed for allowing the petition.

Against this, defendant has filed W/O this day denying all the material contentions made in the petition.

At the time of hearing, Ld. Advocate for the defendant raised strong objection and submitted that the defendant has already deposited arrear rent in Court as per the previous claim of the plaintiff.

He prayed for rejection of the petition.

Heard both sides.

Perused the petition, its Written Objection, schedule of amendment as well as materials on record.

Considered.

[p-02]

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[contd.....]

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A plain reading of the provisions of shows Order VI Rule 17 of C.P Code deals with amendment of pleadings which provides as follows:-

*“ The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such a manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties:*

*PROVIDED that no application for amendment shall be allowed after the trial has commenced, unless this Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”*

Careful perusal of the schedule of amendment , it appears that the proposed amendment is formal in nature and if allowed, will not change the nature and character of the suit. Besides the same is necessary for the purpose of determining the real question in controversy between the parties. The suit is also at its nascent stage and trial has not yet commenced.

Moreso, defendant shall get opportunity to controvert such amended pleadings by filing additional Written Statement and the plaintiff has to prove his own case by evidence.

This Court finds that the instant petition for amendment filed by the plaintiff may be allowed at the risk of the plaintiff.

Accordingly,

it is

Ordered

That the petition u/o-6 Rule 17 read with Section 151 of C.P.C filed by the plaintiff on 06-07-2024 is hereby allowed on contest but without cost.

Let the plaint be amended as per schedule of the amendment made in the instant application. Note in the relevant register. Office to do the needful.

Plaintiff is directed to file amended plaint and serve copy thereof upon the defendant in the mean time. Defendant is at liberty to file additional Written Statement if any.

p.t.o.....

Record reveals that W/S has already been filed by the defendant on 06-07-2024 and the same has been accepted.

Accordingly, let the suit be transferred to the Court of **Ld. Judge, 2 nd Bench, P.S.C Court , Calcutta** for disposal. Parties are directed to appear before the transeree Court on **12.12.2024**.

Dictated & corrected

by me :-

Chief Judge.

J.O .Code:- WB 01244.