

Ejectment Suit:-259 of 2021.

[ CNR No WBPS 01 000458 2021 ]

Before – Sonia Majumdar- Ld. Chief Judge.

Order No:-14.

04-05-2023.

Today is fixed for passing order in respect of petition u/o-VI Rule 17 read with Section 151 of C.P C filed by the plaintiff dt 20-12-2022 and filing of challans and further hearing of petition u/s 7(2) of W.B.P T Act filed by defendant no-2 dt 03-01-2022 and taking steps by the plaintiff for service of summons upon defendant no-1 in terms of order dt 14-03-2022.

Both parties file haziras. On call, plaintiff is found present through his Ld. Advocate. But on repeated calls, neither defendant no-2 nor anybody on his behalf appears. It is now 11:30 A.M. Ld. Advocate for the plaintiff prayed for passing necessary order.

Heard Ld. Advocate for the plaintiff. Perused the materials on record.

Record is taken up for passing order in respect of petition u/o-VI Rule 17 read with Section 151 of C.P C filed by the plaintiff dt 29-10-2022.

Perused the petition, its written objection filed by defendant no-2 and materials on record.

By filing the instant application, plaintiff has prayed for amendment of the plaint as per schedule mentioned in the application. It has been contended that an Advocate Commissioner was appointed for holding inspection of the suit building as per Order of this Court passed in connection with petition u/o-39 Rule 7 of C.P Code filed by the plaintiff and during the commission work , it was detected that due to mistake and oversight, the description of the suit building has been wrongly typed in the plaint and the said error it required to be corrected.

*contd.....*

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Under this circumstances, by filing the instant application, the plaintiff has prayed for amendment of the plaint as per schedule of amendment as mentioned in the instant application.

Against this, defendant no-2 has filed Written Objection against the petition on 30-01-2023 denying all the material contentions made in the petition. It has been contended in the W/O that Commission for local inspection has not yet started. The facts which the plaintiff intends to incorporate are not subsequent facts and plaintiff must have the knowledge of the same but due to negligence and intentional latches, plaintiff did not incorporate the same. The defendant no-2 prayed for rejection the petition.

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 will not change the nature

and character of the suit. The suit is also at its nascent stage and although local inspection of the suit premises has been allowed but trial of the suit has not yet commenced. Moreover, the amendment will be helpful for the purpose of determining the real question in controversy between the parties.

Defendant no-2 shall also get opportunity to controvert such pleadings by filing additional Written Statement.

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 20-12-2022 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 no-2 in the mean time. Defendant no-2 is at liberty to file additional Written Statement if any.

To ( **15-07-2023** ) for filing amended plaint by the plaintiff . Defendant is at liberty to file Additional Written Statement. To-date is also fixed for filing of challans and further hearing of petition u/s 7(2) of W.B.P T Act filed by defendant no-2 dt 03-01-2022 and taking steps by the plaintiff for service of summons upon defendant no-1 in terms of order dt 14-03-2022.

Chief Judge.

J.O .Code:- WB 01128