

EJECTMENT SUIT NO. 118 OF 2023
C.N.R No. WBPS01-000252-2023

IN THE COURT OF 4TH BENCH, PRESIDENCY SMALL CAUSE COURT,
CALCUTTA

PRESENT: SMT. ARCHITA SEN, JUDGE, 4TH BENCH, PRESIDENCY SMALL
CAUSE COURT, CALCUTTA.

ORDER NO-15
DATED 06-09-2024:

Today is fixed for hearing of the petition dated 13.05.2024 under Order VI Rule 17 of the Code of Civil Procedure filed by the plaintiffs. Both the parties file separate attendance through their respective Ld. Advocates.

The record is taken up for hearing of the petition dated 13.05.2024 under Order VI Rule 17 of the C.P.C.

Heard both sides. Perused the case record including the petition and written objection.

Considered.

The amendment has been sought to incorporate the fact that the defendant has made a pucca construction by making of mezzanine floor at the suit premises without the consent of the plaintiffs for which damage has been caused to the suit building. It is submitted on behalf of the plaintiffs that this fact of construction by the defendant came to the knowledge of the plaintiffs during the commission. It is further stated that this fact is required to be incorporated in the plaint because it will help the plaintiffs to establish their case against the defendant.

The defendant filed written objection against the prayer of the plaintiffs. On perusal of the written objection it appears that the main ground of objection against the proposed amendment is that it will change the nature and character of the suit. Apart from that it is also stated that the existence of the mezzanine floor was known to the plaintiffs since long but they intentionally kept this fact apart from their pleadings in order to delay the suit.

The provision of amendment of pleadings has been incorporated in the Code of Civil Procedure to be invoked only on the circumstances when amendment is required for proper and effective adjudication of the controversy in question and to avoid multiplicity of judicial proceedings, provided it does not result in prejudice to the other side. In the instant suit the trial has not yet been started. In fact the commission work has not been completed. So this Court thinks that it would not be proper to hold that the plaintiffs have come at a belated stage of the suit. Apart from that this Court shall consider as to whether the facts which the plaintiffs are contemplating to incorporate in the plaint, are necessary for the proper adjudication of the dispute involved in the suit or not. The present suit was filed on the ground of default, reasonable requirement and keeping the suit premises under lock and key for more than five years. Now the plaintiffs came to know during the commission work that the defendant has made a mezzanine floor at the suit premises without the consent of the plaintiffs in writing. So they are intending to incorporate this fact also. It is now well settled that in the notice under section 6 (4) of the Act there is no necessity to incorporate the ground of eviction and such non-incorporation would not be fatal for a suit for eviction. Therefore, addition of a new ground for eviction by way of amendment is permissible. It was held in the case of Dwarka Prosad VS Gopal Das, 80 CWN 269 that in an Ejectment Suit on the ground of default, it is permissible for the landlord to add the ground of reasonable requirement, unauthorized construction etc. So addition of a new ground of eviction by way of amendment cannot be construed as changing the nature and character of the suit or alter the cause of action.

In view of such discussion and on perusal of the petition and post considering the contemplations of the plaint this Court is of the view that the amendments that are sought for are of such a nature that is in consonance with the facts embodied in the plaint. So in the opinion of the Court that amendment will not change the nature and character of the suit nor it is of such a nature which is barred by the law of limitation. This Court finds no impediment to allow the instant prayer.

Accordingly it is

O R D E R E D.

That let the amendment as sought for by the petition under Order VI Rule-17 of the Code of Civil Procedure, dated 13.05.2024 is allowed.

Let the petition under Order VI Rule-17 of the Code of Civil Procedure dated 13.05.2024 be treated as part of the plaint.

D.A. to do needful. Note accordingly.

The plaintiffs to file amended plaint within next date positively after serving copy of the same upon the defendant. The defendant is at liberty to file the additional written statement within 30 days from the date of receipt of the amendment plaint.

The petition under Order VI Rule-17 of the Code of Civil Procedure, 1908 dated 13.05.2024 is thus allowed and disposed of on contest and without costs, in above terms.

To 21/11/2024 for steps by plaintiffs.

Typed, Corrected and Printed by me.

Judge, Bench-4
PSCC, Calcutta
J.O Code WB01174

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