

Ej. Suit No. 337 of 2011
CIS: WBPS01-000504-2011

Order No. 77
dated- 19.02.2024

Today is fixed for hearing of the application u/O-6, Rule-17 of CPC filed at the instance of the defendant on 17.01.2024.

Written objection has been filed today by the plaintiff against above application.

Both parties are filed Hazira.

I have heard Ld. Advocates on behalf of both sides.

Perused the materials on record.

Considered.

It is submitted by the Ld. Advocate for the defendant that the instant suit has been filed by the plaintiff against the defendant under the provision of West Bengal Premises Tenancy Act, 1997 seeking the eviction of the defendant on several grounds including the ground of reasonable requirement. It is specifically alleged that during the pendency of the instant suit the plaintiff has constructed three rooms on the roof of the suit building over the second floor and the plaintiff is in occupation of those rooms which has certainly fulfilled the requirement of the plaintiff for more rooms, if any, at all. It is specifically stated that incorporation of the above fact is necessary for adjudication of the issue regarding reasonable requirement. Hence, the application on carpet under Order-6, Rule-17 of CPC seeking amendment of the written statement.

The Ld. Advocate for the plaintiff raised objection by stating that the instant petition is absolutely misconceived and is not maintainable at this belated stage. Moreover, the Ld. Advocate for the plaintiff submitted that commission work has already been conducted over the accommodation of the plaintiff in the suit building and report has already been submitted by the Ld. Advocate Commissioner from which the exact picture of the plaintiff's available accommodation is right before this Court. Accordingly, the plaintiff has prayed for rejection of the application.

At the very outset, it is noteworthy to mention here that amendment of written statement stands on a little different footing than amendment of plaint. It is settled position that in case of amendment of written statement, the Court should be liberal in allowing them as there would be no question of prejudice and as the question of prejudice would be for less in the formal than the latter case. Even addition of a new ground of defence or substitution or altering a defence or taking inconsistent pleas in the written statement can be allowed if the proposed amendment seeks to elaborate and clarify the statement made in the W/S if the same is necessary for reaching the just decision in the suit.

The general view is that when in the event of allowing amendment, the other party can be compensated in money, the amendment of the written statement should not ordinarily be rejected.

However, this rule is subject to an exception that the plea of amendment should not be allowed in a case whereby the proposed amendment other side would be subjected to serious injustice.

Now, in the present case, after hearing both sides and after perusing the materials on record, it appears that the defendant desires to bring some factual aspect into his pleading with regard to ground of reasonable requirement as taken by the plaintiff in the plaint. Though the plaintiff has taken the plea that local inspection has already been conducted but the defendant has taken the specific ground about construction of the more rooms by the plaintiff in very recent time i.e. necessarily after holding local inspection in the suit building.

It goes beyond saying that, in order to decide the merit of an application for amendment of pleading the proposed amendment is to be placed into the watertight compartment of Order 6 Rule 17, CPC. It consists of two parts, the first part if **discretionary (may)** and leaves it to the Court to allow amendment at any stage of proceeding, while the second is **imperative (shall)** and enjoins the Court to decide all the amendment that are necessary to decide the dispute between the parties. The matter does not stop here, **proviso to Order 6 Rule 17, CPC** speaks that, no amendment shall be allowed after commencement of trial unless the party seeking amendment satisfy the Court that, despite due diligence he could not produce the fact before the Court.

Glancing through the petition, I find that the defendant desires to bring some facts which are related to fact of the present case yet the same is necessary for proper adjudication of the instant suit in the opinion of the defendant and in my considered view the proposed amendment is necessary for proper adjudication of the issue regarding reasonable requirement of the plaintiff. It should also be kept in mind at the time of hearing an amendment application that the Court should not go into the merit of the proposed amendment at the time of hearing as the Court is not to hold a mini trial at the time of amendment hearing and the facts sought to be incorporated by way of amendment is required to be proved by a party making such amendment by way of producing evidence at the stage of trial. As such, if the amendment is found to be necessary for proper adjudication of the matter in dispute, it should be allowed by the Court.

Considering the above, I am inclined to allow the petition for amendment filed by the defendant on contest but without cost.

Hence, it is,

ORDERED

that the instant application for amendment of written statement dated 17.01.2024 under Order 6 Rule 17 of the Code of Civil Procedure read with section 151 of the Code of Civil Procedure is considered and allowed on contest but without cost.

Fixing 28.02.2024 for amended written statement positively.

Dictated and corrected by me:

Judge

**Smt. Sudipa Banerjee
(J.O. Code: 01148)
Judge, 3rd Bench,
Presidency Small Cause Court,
Calcutta.**