

CNR No: WBSP010138692015  
Present: Subhra Som Ghosal  
J.O Code: WB00984  
Title Appeal No: 209 of 2015

Order No. 60, dated: 03-07-2024.

Both the parties to this proceeding in order to mark their presence before this Court are present by filing their haziras through their respective Ld. Advocates.

As stipulated by the previous order today is fixed for hearing of the petition under Order VI rule 17 of the Code of Civil Procedure, 1908 along with the appeal.

On call the Ld. Advocates for both sides are found to be present.

I have perused the petition under Order VI rule 17 of the Code of Civil Procedure, 1908.

At this stage this Court finds that a specific order is required to be passed in order to distinguish the hearing of the petition under Order VI rule 17 of the Code of Civil Procedure, 1908 and the appeal.

This exercise will assist this Court in disposing of this appeal in a systematic way.

However, it was submitted by the Ld. Advocate for the respondent that previously order has been passed to the effect that the petition under Order VI rule 17 of the Code of Civil Procedure, 1908 will be heard along with the appeal. From the case record it is axiomatic that petition under Order VI rule 17 of the Code of Civil Procedure, 1908 was filed on 18-04-2017 and the case was taken off from argument board. However, on 17-08-2017 an order was passed fixing the case for hearing of the petition under Order VI rule 17 of the Code of Civil Procedure, 1908 along with the appeal. No reason has been assigned in such order.

At this stage it is required to be mentioned that the Hon'ble Division Bench of the Hon'ble Court at Calcutta in the case ***Bangshidhar Pal -vs- Anil Kumar Pal***, reported in ***1994 (2) C.L.J. 114*** has been pleased hold that an application for additional evidence under Order 41 Rule 27 of the Code of Civil Procedure cannot be considered by the appeal court in isolation of the appeal. But the same principle need not be followed in hearing the application for amendment of plaint by the appeal court as the merit of the appellant's application for amendment can be considered independent of the appeal though the merit of the appeal. I am emboldened to hold this, in view of the observations made by the Hon'ble High Court in the case of ***Bangshidhar Pal vs Anil Kumar Pal [C.O. No.1475 of 2010 decided on 19<sup>th</sup> July, 2010]***.

Hence, I find no impediment in taking up the petition dated 18-04-2017 before hearing the appeal finally on merit.

Heard Ld. Advocate for the appellant on the merit of the amendment petition.

The case is adjourned at this stage.

To 16-08-2024 for further hearing of the amendment petition and passing of order. The appeal will be heard after disposing of the amendment application.

A copy of this order in PDF/PDFA format be uploaded to the server following the modalities of Rule 121A of the Civil Rules and Order of the Hon'ble High Court [since amended by Notification No. 131-G dated 15-01-2015].

Typed to the dictation directly;  
corrected on the system.

Sd/-Subhra Som Ghosal  
Additional District and Sessions Judge,  
01<sup>st</sup> Court, Alipore, South 24 parganas.

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