

CNR No: WBSP01-010701-2022
Present: Sarajit Mazumdar [J.O Code: WB00646]
Title Appeal No:209 of 2015 (R-06 of 2016)

Order No.62, dated: 20-09-2024

Today is fixed for further hearing of the application for amendment dated 18.04.2017 filed under Order 6 Rule 17 read with section 151 of C.P.C.

Both the parties are represented through their respective learned advocates and on their behalf lawyer's hazira are filed.

The record is taken up for hearing of the application for amendment dated 18.04.2017 filed under Order 6 Rule 17 read with section 151 of C.P.C.

Heard the learned advocate for the appellants who submits for permitting them to get the paragraph nos.2 and 16 of the plaint amended on the ground that the said premises has two part, one part is two storied whereas the other part is one storied having tiles shed roof along with bath and privy. But in inadvertently in paragraph no.2 of the plaint it is simply mentioned that premises is partly one storied building and in a portion of the said premises on the Eastern side there are tiles shed rooms with common bath and privy in the ground floor.

According to him the proposed amendment will not introduce a new fact. In support of his contention he pointed out that in course of cross examination DW-1 admitted that suit premises was two storied at the time of induction of tenancy and still today it is two storied.

He further submits for permitting them to get the paragraph no.16 of the plaint amended on the ground that mistakenly the date on and from which cause of action arose is not mentioned. According to him cause of action is not a mere date but a bundle of facts. He further submits that here cause of action arose finally on failure to comply the instruction contained in the notice to quit.

In support of his contention he contends that for mere technicalities the amendment even at the stage of appeal should not be rejected when it is required for proper adjudication of the dispute. In support of his contention he referred the decision of the Hon'ble High Court, Calcutta reported in 2017 (2) ICC 447 (Cal).

On other hand learned advocate for the respondent raises vehement objection on the ground that during pendency of the suit these appellants sought for amendment. Not only that during pendency of the suit there was local investigation twice, once at the instance of the appellants and other on the basis of the application of the respondent. Both the learned commissioners submitted their report disclosing the exact status and condition of the suit premises. So, it cannot be accepted that it was not within the knowledge of the appellant. According to him by way of amendment he wants to fill up the lacuna in the appellate stage. He also argues that the date of cause of action is left blank. He further submits that all these were pointed out at the time of argument before trial court. In spite of that they did not bother to apply for amendment during argument. According to him amendment in appellate stage can be allowed in a rare case. At this stage if amendment is allowed it would amount to retrial of the suit. In support of his contention he referred the decisions of the Hon'ble High Court, Calcutta reported in 2013 (4) ICC 495 (Cal), 2015 (4) ICC 945 (Cal) and of the Hon'ble Allahabad High Court cited in 2023 (2) ICC 29 (All).

Perused the case record. Considered.

Being first appellate court hearing an application for amendment of the plaint in connection with suit filed way back in the year 1993 i.e. more than 31 years ago. During trial these appellants did not bother to apply for amendment even after submission of reports of local inspection commissioners. So, by no stretch of imagination it can be accepted that the fact which he wants to introduce by way of amendment was not within his knowledge.

In the decision relied upon by the appellants Hon'ble High Court, Calcutta has been pleased to opine that the court should consider whether the proposed amendment is genuine and is necessary for the purpose of the determination of the question involved therein and reason for delay has been sufficiently explained. In the referred decision the application for amendment was before the learned trial court in spite of that Hon'ble Court advised for looking into the reason for delay.

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The instant appeal has been filed on 07.10.2015 and the application for amendment is sought for on 18.04.2017. So what I find that the application for amendment even before this appellate court is not filed immediate after institution of the appeal. It may not be out of place to point out that even after decision of the learned Trial court appellants did not bother to get their pleadings amended immediate after the institution of the appeal.

Learned advocate for the appellants contended that second part of order 6 Rule 17 is imperative and enjoins the court to allow all necessary amendment and procedural hurdles ought not to impede the cause of justice in dispensation mechanism. On this point he referred the decision of Hon'ble Punjab and Hariyana High Court published in 2017 (1) ICC 592 (Punjab & Hariyana). In this decision the application for amendment was filed before the trial court but here the application is before the appellate court long after the passing of impugned judgment and decree.

Merely because during cross examination the opponent has admitted something that cannot be only reason for providing the foundation of that admission by way of amendment. Pleadings is to be proved by way of evidence. On the basis of the evidence pleading should not be allowed to be inserted.

In this case the appellants have lost before the trial court. By way of amendment they are trying to introduce a fact which was well within their knowledge right from the beginning. If at this stage the application for amendment is allowed it will have the effect of retrial of the suit in a case where the appellants were all along aware of the fact which they intend to introduce by way of amendment almost after more than two decades.

I would like to point out that no doubt cause of action is nothing but a bundle of facts but the date or dates as the case may be required for reckoning the limitation.

Having regard to all these discussed above and the decisions of the Hon'ble Courts I am of the humble view that if the proposed amendment is allowed the right crystallised in favour of the respondent might be lost and they shall be prejudiced to a great extent which cannot be compensated in terms of money.

Hence it is

O R D E R E D

That the application for amendment dated 18.04.2017 filed under Order 6 Rule 17 read with section 151 of C.P.C is dismissed without cost.

Fix 28-11-2024 for argument.

Typed to the dictation directly;
corrected on the system.

Sd/-Sarajit Mazumder
Additional District and Sessions Judge,
01st Court, Alipore, South 24 parganas.

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