

T.S 31 of 2014

Order no. 58 dated 15.12.2015

Today is fixed for hearing of the petition under Order VI rule 17 C.P.C praying for amendment of the plaint filed on 01.12.2015.

Defendant raised strong objection by filing W/O contending that the matter has already been decided and was rejected and therefore this court cannot re-decide the matter by virtue of principle of *Constructive 'Res-judicata'*. Ld Advocate further contended that even after getting opportunity to file the amended plaint previously but plaintiff failed to comply the same. They prayed for rejection of the petition of the plaintiff.

Heard both sides and perused the materials on record. Perused the order no. 46, 50 and 56 of this court. This court never heard and finally disposed of the petition under order VI rule 17 C.P.C. therefore the principle of the constructive res-judicata does not apply in this case.

The amendment petition so filed by the plaintiff appears to be formal and necessary form proper adjudication of the suit and is therefore allowed but subject to payment of cost of Rs.1000 to be paid to the defendant for delay and harassment of the defendant.

Hence, it is,

Ordered

that the petition under Or VI R 17 C.P.C filed by the plaintiff is allowed on contest subject to payment of cost of Rs.1000 to the defendant as condition precedent.

Plaintiff to file amended plaint according to schedule to the amendment petition as per order VI rule 18 C.P.C after serving copies upon the defendants.

To 06.01.2016 for P.Hearing of the suit. Discover in the meantime as a last chance.

D/c by me.

Judge,S.C.C.,Sealdah.

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