

TS No. 25 of 2017 (R-25 of 2017)
CNR No. WBWM-02-003028-2017
J.O. Code No. WB 01088

Order dated 26.09.2024

Today is fixed for hearing of the petition under Order 6 Rule 17 of CPC, W/O, if any in the meantime and further cross examination of PW 1.

Plaintiff is present by filing hazira.

Defendant no. 1 is present by filing hazira.

Plaintiff has filed W/O against the application under Order 6 Rule 17 read with Section 151 of CPC filed by defendant nos. 5 to 34.

It transpires that copy of the W/O has been served upon defendant nos. 5 to 34 on 24.09.2024.

Defendant no. 5 to 34 filed an application praying for time for filing reply to the written objection.

The Learned Advocate on behalf of the plaintiff raised strong objection against the prayer for adjournment and prayed for exemplary cost.

It transpires from the scrutiny of the record that the Hon'ble High Court in connection with 785 of 2023 vide order dated 04.01.2023 has directed this Court to proceed with the case in accordance with law and to dispose of the case expeditiously, preferably within six months.

It transpires from the conduct of the defendant nos. 5 to 34 that they have adopted dilatory tactics to proceed with the case.

Considering the direction of the Hon'ble High Court and further considering the conduct of the defendant and again considering the contents of the W/O filed by the plaintiff I find that the adjournment application for submitting reply to the written objection filed by the plaintiff is misconceived and thus stands rejected.

The application filed under Order 6 Rule 17 read with Section 151 of CPC is taken up for hearing.

Heard both sides.

According to the application filed by the defendant nos. 5 to 34, the defendant nos. 5 to 34 / petitioner are entitled to enforce the agreement for sale entered into by the said petitioner with proforma defendant no. 35 Sipra Dutta for specific performance of contract as they are ready and willing to pay the agreed lease rent in terms of the lease agreement entered into between the plaintiff and the defendant no. 1 on 27.04.2004. It is further contended by the petitioners that subsequently the said defendant no. 1 by various registered deed of assignment have duly made sub lease assign the said lease hold interest in favour of the petitioners. Thus, the petitioner / defendant no. 5 to 34 intended to incorporate the said fact in the written statement and also intended to incorporate counter claim and amend their prayer according to the schedule of the proposed amendment.

The Learned Advocate on behalf of the plaintiff by filing W/O vehemently opposed the prayer of the defendant nos. 5 to 34 and contended before the Court that he is not a party to the alleged agreement for specific performance of contract and the suit is running ex parte against the proforma defendant and the petition filed by the defendant no. 5 to 34 is only to delay the disposal of the suit and as such the plaintiff has prayed for rejecting the prayer for amendment.

Heard the respective submissions of the Ld. Advocates.

Perused the documents filed by the defendants as well as the materials on record.

Considered.

It transpires from the record that the plaintiff has filed the present suit for declaration, permanent injunction, recovery of khas possession, damages and mesne profits. The brief fact of the plaintiff's case is that the plaintiff and proforma defendant no. 35 Sipra Dutta became the sole owner of the suit premises having equal share therein. Thereafter, Sipra Dutta by indenture of lease dated 21.01.1998 granted a lease in favour of defendant no. 2 in respect of her 50% share for a time of 99 years from 02.09.1997. Thereafter defendant no. 2 by indenture of sub lease dated 06.12.2003

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transferred their lease hold right in favour of defendant no. 1 in respect of 50% share of the said premises for a period of 92 years 9 months commencing from 01.11.2003. Thereafter, by deed of lease executed between plaintiff and defendant no. 1 the plaintiff granted lease in respect of 50% share of the said premises to defendant no. 1 in lieu of monthly rent of Rs.5,000/- payable by the lessee on or before the 7th day of month in advance to the lessor / plaintiff. It is mention in clause (g) of para 4 of the said deed of lease that if the rent remained unpaid for a period of six months after the date whereupon the same ought to be passed or there shall be any breach or non observance by the lessee of any of the terms and conditions stipulated in the deed of lease it shall be lawful for the lessor at any time demanding the rent by issuing the notice and on failure of the observance of the said terms the lease shall stand determined. It is alleged by the plaintiff that due to fraudulent entry in the mutation record under KMC the plaintiff issued written objection to the concerned A.A.C (North) of KMC on 07.05.2013 and sent a copy to the defendant. The defendant allegedly amalgamated the lease hold premises without prior knowledge and consent of the plaintiff and started making multi storied construction changing nature and character of the suit property. It is alleged by the plaintiff that the defendant even defaulted in paying rent and encumbered the lease hold property with possession which is detrimental to the interest of the plaintiff. It is alleged that the plaintiff that defendant no. 1 by their illegal act has forfeited his right to continue with the lease deed granted by the plaintiff and as such he is entitled to re-enter the lease hold property mentioned in the schedule. The plaintiff allegedly by letter dated 15.05.2014 and also by letter dated 25.07.2024 to the defendant requested the defendant no. 1 to pay the lease rent but the defendant no. 1 by their reply letter dated 21.05.2014 intimated the plaintiff that he has assigned the lease hold property to different assignee and as such according to the defendant no. 1 the plaintiff may collect the rent from the assignee. Since the lease agreement dated 27.04.2004 was executed between the plaintiff and defendant no. 1 the plaintiff allegedly could not realize the rent from the assignee of the suit premises and as such the plaintiff for violation of the terms of the deed of lease prayed for declaration, permanent injunction and recovery of khas possession.

The defendant no. 5 to 34 by filing W/S inter alia claims that the proforma defendant has agreed to sale, transfer her residuary interest of undivided 50% share of land of the premises in question to them and total consideration as agreed individual and separate agreement for sale was duly entered by the proforma defendant being one part as vendor and defendant nos. 5 to 34 being the other part in respect of their separate individual agreement for sale. Now the present defendant nos 5 to 34 intend to incorporate in their pleading the counter claim regarding specific performance of the said agreement for sale executed by proforma defendant no. 35 and defendant nos. 5 to 34 individually in respect of undivided 50% share of the premises 41 A, Shimla Road, Kolkata.

Under Order 8 Rule 6 A (1) of CPC it is provided that a defendant in a suit may, in addition to his right of pleading a set off under Rule 6, Set up, by way of Counter Claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter claim is in nature of a claim for damages or not :-

Provided that such counter claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

In the present case the defendants no. 5 to 34 did not value the counter claim. Moreover, it appears from the relief sought in the counter claim that the defendant nos. 5 to 34 has prayed for decree for specific performance of contract of the agreement for sale entered into by the proforma defendant no. 35 and the present petitioners individually in respect of undivided 50% share of the premises 41A, Shimla Road, Kolkata. Admittedly the alleged agreements for sale were not executed by the present plaintiff and as such if any cause of action arises in respect of the performance of the alleged agreements for sale the defendant nos. 5 to 34 had to pursue the same before the appropriate forum in separate suit and if the said issue is clubbed in the present suit injustice and irretrievable prejudice will be caused to the plaintiff as the plaintiff was not party to the said agreements and the relief is sought against the proforma defendant. Moreover, trial has already been started and in the present case the scope of amendment is limited. The facts sought to

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be incorporated by the present petitioners in their W/S is not new and it is not their case that despite of due diligence they could not brought the said fact in their W/S. Thus, in view of the aforesaid discussions I am not inclined to allow the prayer of the defendant nos. 5 to 34.

Hence, it is

ORDERED

that the application filed by the defendant nos. 5 to 34 under Order 6 Rule 17 read with Section 151 of CPC is considered and be the same is rejected on contest.

Although the date was fixed for cross examination of PW 1 the Learned Advocate on behalf of the defendant nos. 5 to 34 submitted before the Court that he is not ready to cross examine the witness.

The witness is discharged for today without being examined. The matter is adjourned on payment of cost of Rs.500/- to be paid by the defendant nos. 5 to 34 to the plaintiff by the next date.

Witness is directed to be present on the date fixed.

To 08.11.2024 for payment of cost by defendant nos. 5 to 34, further cross examination of PW 1.

D/C by me,

Sd/-
Civil Judge (Sr. Divn.)
Small Causes Court, Sealdah

Sd/-
Civil Judge (Sr. Divn.),
Small Causes Court, Sealdah