

**Title Suit 92/2015 (R-09/2016)**

Order No.31 Dt.01.03.2016

Today is fixed for defence Witness. Defendant no. 1 filed a petition under order VI rule 17 CPC read with section 151 CPC praying for amendment of the written statement in change circumstances. Copy served and objected by plaintiff. Defendant no.2 submits that he has nothing to say on this petition. Record is taken up for hearing of petition U/o 6 rule 17 CPC read with Section 151 CPC filed by the plaintiff today.

Ld. Advocates of both sides are present.

Ld. Advocate for the defendant no.1 submits for amendment of written statement is necessary due to change circumstances due to demise of Bhadreshwar Basak and the issue is related to the share of the defendant no.1 only due to such death. Ld. Advocate of the plaintiff verbally submits that as per proviso to order 6 rule 17 CPC contending that the facts which the defendant no.1 wants to incorporate was within the knowledge of the defendant and in this respect he made enormous cross examination to the PW. He further submits that after closure of the PW, such petition cannot be allowed in the situation when due diligence on the part of the defendant no.1 is absent.

I have gone through the petition U/O 6 rule 17 CPC. The defendant no 1 took the defence that due to changed circumstances this amendment is required. On perusal of the plaint it appears that said Bhadreswar Basak died on 14.03.1960 and the details of said facts are already been incorporated in the plaint. The written statement of the defendant no.1 was filed on 18.03.2014 after going through the plaint and said defendant no.1 was well aware of such 'changed circumstances' for last 54 years. Thus the petition on the ground of changed circumstances is nothing but an attempt from the side of the defendant no.1 to prolong this suit which this court cannot entertain and be blind. Secondly, the facts which the plaintiff wants to incorporate was well within the knowledge of the

defendant no.1 at the time of filing written statement and it is not being contended that he could not have raised the matter before the commencement of the trial in spite of his due diligence. On perusal of this petition, this court does not come into conclusion that in spite of due diligence, the defendant no.1 was unable to raise these facts which he wants to incorporate by amendment of the written statement before the commencement of the trial. The judgement reported in AIR 2000 All 91 so referred by the defendant is not applicable in the instant case as regard to the difference of facts and is thus not relied upon. This amendment cannot be permitted U/o 6 rule 17 CPC and be rejected with exemplary cost.

Hence it is

ORDERED

that the petition under order VI rule 17 CPC filed by the defendant no.1 is rejected on contest and with a cost of Rs.2000/- to be paid to the plaintiff by 7 days of this order failing which he will be barred to adduce evidence of his side.

Fixing 11.03.2016 for evidence of the defendant no.1 as last chance. Else evidence of the defendant no.2, if any.

D/c by me.

Judge, S.C.C.,Sealdah.

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