

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

**C.O. 910 of 2020
Samir Ghosh & Anr.**

**Vs.
Pratap Ghosh & Ors.**

For the petitioner :Mr. Mahendra Prasad Gupta, Adv.
Mr. Ayan Mitra, Adv.

For the Opposite Parties :Mr. Debjit Mukherjee, Adv.
Ms. Susmita Chatterjee, Adv.
Mr. Kaustav Bhattacharya, Adv.
Ms. Priyanka Jana, Adv.

Heard On :02.09.2024 & 03.10.2024,

Order On :05.12.2024

Bibhas Ranjan De, J. :

1. The instant civil revision application has been preferred under Article 227 of the Constitution of India Challenging the order dated 16.11.2019 passed by Ld. Civil Judge (Junior Division),

2nd Court, Howrah in connection with Misc. Case No. 02 of 2014 arising out of Title Suit No. 32 of 2013.

Background:-

2. In February, 2013 the Plaintiffs/Revisionists filed a suit for declaration, permanent and mandatory injunction against the Defendants before the Learned Civil Judge (Junior Division) 2nd Court, Howrah which was registered as Title Suit No. 32 of 2013.
3. After filing the said suit, the Plaintiffs/Revisionists filed an application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure wherein Learned Judge was pleased to direct the parties to maintain status-quo in respect of nature, character and possession over the property till next date of hearing.
4. On 11th June, 2013 the Opposite Party No. 1 herein duly filed written statement denying all material allegations contained in the Plaint. Thereafter, the Opposite Party No. 1 filed an application before the CESC authority for supplying electrical energy but due to inaction on the part of the CESC authority, the Opposite Party No. 1, Pratap Kumar Ghosh filed an application under Article 226 of the Constitution of India before this Hon'ble Court being W.P. No. 2240 (W) of 2013.

That on 27.09.2013, this Hon'ble Court was graciously pleased to direct the CESC authority to give electric connection to the premises of Opposite Party No. 1 (Pratap Kumar Ghosh) if necessary with the help of police authorities. Pursuant to the direction of the Hon'ble Court, the electric connection was provided to the premises of Opposite Party No. 1.

- 5.** On 29th April, 2014 the Plaintiffs/Revisionists filed an application under Order 39 Rule 2A of the Code of Civil Procedure alleging violation of the Order dated 21.02.2013, which was registered as Misc. Case No. 2 of 2014.
- 6.** On 21 August, 2014 the Opposite Party No. 1, Pratap Kumar Ghosh filed written objection in the said Misc. Case No. 2 of 2014.
- 7.** Thereafter, the Plaintiffs/Revisionists filed an application for Contempt before this Hon'ble Court alleging violation of the Order dated 27.09.2013 passed, which was registered as CPAN 2279 of 2014 but was dismissed with the observation that the same was frivolous.
- 8.** That during pendency of the Misc. Case No. 2 of 2014, the Opposite Party No. 1 filed an application on 31.08.2019 for amendment of his written objection. The Plaintiffs duly filed written objection against the same on 16.11.2019 and on the

same day the Learned Judge was pleased to allow the amendment application being a subsequent event. Being aggrieved by and dissatisfied with the said order dated 16.11.2019 wherein application for amendment of written objection in connection with Misc. Case No. 2 of 2014 was allowed, the present Revisional Application has been filed by the Plaintiffs.

Argument:

9. Ld. Counsel, Mr. Mahendra Prasad Gupta, appearing on behalf of the petitioner has mainly canvassed his argument on the point that the Ld. Trial Judge while passing the impugned order based his observation on one of the judgments of the Hon'ble Apex Court and emphasized on taking a liberal view to allow the amendment application. However, a careful scrutiny of the order impugned will make it abundantly clear that there is no citation of the judgment that is being referred to while passing the order.

10. Mr. Gupta further contended that the written objection filed with affidavit by opposite party no.1, mentioned above evidently shows that the facts proposed to be brought by way of amendment, were within the knowledge of the defendant/opposite party no.1 and the same was also

mentioned in the written objection filed by the defendant/opposite party no.1 in connection with injunction application filed in Title Suit No.32 of 2013. The proposed fact was within the knowledge of the defendant/ opposite party no.1 as would be evident from the said written objection dated 18.05.2015 itself. Therefore, Ld. Trial Judge failed to consider the effect of proviso contained in Order 6 Rule 17 of the CPC which puts an embargo in exercise of its jurisdiction after commencement of trial which in turn make the impugned order liable to be set aside.

11. In support of his contention, Mr. Gupta has relied on the following cases:-

- ***Vidyabai and others vs. Padmalatha and another*** reported in ***(2009) 2 Supreme Court Cases 409***
- ***Pandit Malhari Mahale vs. Monika Pandit Mahale and others*** reported in ***(2020) 11 Supreme Court Cases 549***
- ***Ajendraprasadji N. Pandey and another vs. Swami Keshavprakeshdasji N. and others*** reported in ***(2006) 12 SCC***

- ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another*** reported in ***(2022) 16 Supreme Court Cases 1.***

12. In opposition to that, Ld. Counsel, Mr. Debjit Mukherjee, appearing on behalf of the opposite parties has submitted that the opposite party no. 1 filed an application under Order 6 Rule 17 of CPC for amendment of his written objection filed in Misc. Case no. 2 of 2014 in order to incorporate the subsequent facts which have occurred after filing of his written objection dated 21.08.2014. The subsequent event took place on 09.01.2015 which is absolutely required to be brought on record by way of amendment.

13. Mr. Mukherjee has further argued that subsequent events can indeed be incorporated by way of amendment in spite of the proviso to Order 6 Rule 17 of the CPC if some facts come to the knowledge subsequent to the commencement of trial provided that the proposed amendment is found to be necessary on a bare reading.

14. In support of his contention, Mr. Mukherjee, has relied on the following cases:-

- ***Nitaben Dinesh Patel vs. Dinesh Dahyabhai Patel reported in (2021) 20 supreme Court Cases 210***
- ***Raj Kumar Bhatia vs. Subhash Chander Bhatia reported in (2018) 2 Supreme Court Cases 87***
- ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another reported in (2022) 16 Supreme Court Cases 1.***
- ***Radhey Shyam and another vs. Chhabi Nath and others reported in (2009) 5 Supreme Court Cases 616***

Ratio of the cases relied on behalf of the parties:-

15. I have gone through all the cases that have been cited on behalf of the parties in order to further strengthen their sets of arguments respectively. After proper evaluation following ratios have come for due deliberation.

- ***For the petitioner:-***

- i.** In ***Vidyabai*** (supra) & ***Pandit Malhari Mahale*** (supra) the Hon'ble Apex Court held that the primary duty of the Court is to decide as to whether an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed.

- ii.** In ***Ajendraprasadji N. Pandey*** (supra) The Hon'ble Supreme Court held that according to the amended provision of Order 6 Rule 17 of the CPC no application for amendment shall be allowed after the trial has commenced, unless in spite of due diligence the matter could not be raised before the commencement of trial.
- ***For the opposite party:-***

 - i.** In ***Nitaben Dinesh Patel*** (supra) the Hon'ble Apex Court observed that an application for amendment can be allowed even after the trial has commenced provided some facts come to the knowledge subsequently and it is found that it is necessary to be taken into account on a fair reading.
 - ii.** ***Raj Kumar Bhatia*** (supra) the Hon'ble Supreme Court has held that while considering an application for amendment, the High Court cannot go into the merits of the proposed amendment while exercising jurisdiction under Article 227 of the Constitution of India.
 - iii.** In the case of ***Life Insurance Corporation of India*** (supra) Hon'ble Apex Court categorically laid down that the amendments which are necessary for determining the

real question in controversy are to be allowed provided they do not cause injustice or prejudice to the other side.

- iv.** In *Radhey Shyam* (supra) The Hon'ble Apex Court has handed down the following ratio that Article 227 of the Constitution vests the High Court with a power of superintendence which is to be very sparingly exercised to keep the Tribunals and Courts within the bounds of their authority. Under Article 227, orders of both Civil and Criminal Court can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned. Such power, however, is to be exercised to correct a mistake of fact and of law.

Analysis:-

- 16.** This Court has to deal with the issue as to whether the order allowing amendment of written objection filed in a Case registered as Misc. Case no. 02 of 2014 arising out of an application under Order 39 Rule 2A of the CPC alleging violation of order of injunction promulgated by the Trial Court in connection with Title Suit no. 32 of 2013, is sustainable in law or not.

17. To address the issue raised in the instant application, I find it necessary to reproduce the provisions contained in Rule 17 of Order 6 of the CPC which reads thus:

“17. Amendment of pleadings- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties : Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial.”

18. Therefore, before the Amendment Act 2002, the provision of Order 6 Rule 17 consisted of two parts. **First part** is that the court may at any stage of the proceedings allow either party to amend it's pleadings and the **second part** is that such amendment shall be made for the purpose of determining the real question in controversy raised between the parties. Thereby, this provision confers unfettered discretion on the Court to allow amendment of pleadings to the party in such manner and on such terms as it appears to the Court as just and proper.

19. By the Amendment Act 2002, the proviso has been incorporated to Rule 17, Order 6 by which right of a party seeking an amendment has been circumscribed as now it does

not permit a litigant to amend the pleadings after commencement of the trial, unless he satisfies the Court that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. Therefore, it casts an obligation on the party applying for amendment, after commencement of the trial, to offer an explanation to the satisfaction of the Court so as to come to the conclusion that in spite of **due diligence**, the party could not have raised the matter before the commencement of trial.

20. Now coming to our case at hand, I find that opposite party no.1 filed one amendment application on 31.08.2019 for incorporating the fact of decision of the Hon'ble Mr. Justice I. P. Mukherjee in contempt application being no. C.P.A.N. no. 2279 of 2014 in connection with W.P.A No. 2440(W) of 2013, in his written objection which was initially filed on 21.08.2014 against the application under Order 39 Rule 2A of the CPC which was registered as Misc Case No. 02 of 2014.

21. On perusal of the impugned order, it is found that Ld. Judge has allowed the amendment application on the plea of subsequent event and on the ground that there were no latches

on the part of the opposite party no. 1. Ld. Judge also pried into the track of '**liberal view**'.

22. It is not disputed that amendment petition was filed long after the Amendment Act 2002 whereby proviso was added to the provision of Order 6 Rule 17 CPC. It is also not disputed that said amendment petition was filed in course of recording evidence by the Ld. Trial Court in Misc. Case no. 02 of 2014. From that point of view, it cannot be said that amendment application was filed prior to commencement of trial of the proceeding under Order 39 Rule 2A of the CPC.

23. At this juncture, it would be pertinent to mention that this Hon'ble Court was pleased to dismiss the contempt application being no. CPAN 2279 of 2014 on 09.01.2015 i.e. after filing of principal written objection dated 21.08.2014 by the opposite party no. 1. Therefore, it cannot be disputed that this fact which was proposed to be brought by way of amendment was not within the knowledge of the opposite party no. 1 before filing of his principal written objection as this was a subsequent event to 21.08.2014.

24. After careful scrutiny of the averments of the amendment application made by the opposite party herein, it has come to the notice of this Court that the matter sought to be amended

was held after as it was a subsequent event. The tone and tenor of the amendment sought for, in my opinion, has got reasonable nexus with the actual dispute in question and it is absolutely just and necessary to be taken into account for proper adjudication. The proposed amendment will not change the nature and character of the instant case. Therefore, if the proposed amendment is allowed then it won't prejudice either of the parties.

25. It is a settled proposition of law that if a fact comes to the knowledge of the opposite party after the filing of the principal written objection, it can still be incorporated under Order 6 Rule 17 of the CPC, provided the amendment is relevant, and it does not introduce new pleas that could surprise the other party. The Court's discretion plays a crucial role in determining whether such amendments will be allowed, with a focus on ensuring justice and fair play in the proceedings.

26. In this regard, it would be pertinent to mention that the proviso added to Order 6 Rule 17 of the CPC through the Amendment Act of 2002 does not contemplate a specific time frame within which the petition under Order 6 Rule 17 of the CPC has to be filed. The specific proviso envisages to cast a duty upon the person making the application to show that he

was unable to introduce those proposed facts earlier in spite of due diligence. With regard to the case at hand, it is admitted position of fact that the proposed amendment deals with an issue that happened subsequent to the filing of principal written objection dated 21.08.2014. Therefore, it cannot be said that the opposite party no. 1 herein deliberately did not introduce those facts earlier. Therefore, eventhough the disputed amendment application was filed after a substantial period of time, still it cannot be the sole parameter upon which an application under Order 6 Rule 17 can be rejected when those facts are necessary to be taken into account to come to a just conclusion and proper adjudication of the disputed question of facts in connection with the instant case.

- 27.** In the aforesaid view of the matter, I do not find any valid reason to interfere with the observation of the Ld. Trial Judge in disposing of the amendment application vide impugned order dated 16.11.2019.
- 28.** As a sequel, the instant revision application being no. C.O. 910 of 2020, being devoid of merits, stands dismissed.
- 29.** Interim order, if there be any, stands vacated.
- 30.** Connected applications, if there be, also stand disposed of accordingly.

- 31.** All parties to this revisional application shall act on the server copy of this order duly downloaded from the official website of this Court.
- 32.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]