

(2013) 03 CAL CK 0056

Calcutta High Court**Case No:** R.V.W. No's. 96 and 199 of 2012 with S.A No. 399 of 2005 and C.A.N No. 4464 of 2012

Mukti Sengupta

APPELLANT

Vs

Golak Saha

RESPONDENT

Date of Decision: March 13, 2013**Citation:** (2013) 3 CHN 588**Hon'ble Judges:** Prasenjit Mandal, J**Bench:** Single Bench**Advocate:** Sabyasachi Bhattacharya, for the Appellant;

Judgement

Prasenjit Mandal, J.

These two applications for review of the judgment dated March 15, 2012 passed by this Bench in S.A. No. 399 of 2005 are now the subject matter before this Bench. Mr. Sabyasachi Bhattacharya, learned Advocate appearing for the appellant of S.A. No. 399 of 2005 has contended that the application for review being R.V.W. No. 96 of 2012 has been filed by his client stating, inter alia, that while disposing of the second appeal, this Bench has made clear observations as to the ground of reasonable requirement that the findings of the Courts below should not be interfered with. But, on the basis of an application under Order 41 Rule 27 of the CPC, the matter was sent back on remand holding that the learned trial Judge shall hear out the application for amendment of the plaint, if filed and to dispose of the same within a reasonable time after giving an opportunity to the defendant to file a written objection thereon and thereafter, he shall proceed with the suit in accordance with law. So, it was a matter of limited remand. It should be clearly observed accordingly.

2. Mr. Bhattacharya has contended that the order of setting aside of the judgments of the Courts below cannot be supported and appropriate orders should be passed. He has also contended that the remand should be on limited matter, i.e., as to cause of action as indicated in the application under Order 41 Rule 27 of the CPC and the learned Trial Judge should be directed to hear out the matter on limited remand

only. So, the application for review has been filed.

3. Mr. A.K. Rout, learned Advocate appearing for the opposite party of the R.V.W. No. 96 of 2012, has contended that the order of setting aside of the judgment of the Courts below should be sustained, but the prayer for limited remand cannot be supported.

4. Mr. Rout has also contended that in respect of the other application for review, i.e., R.V.W. No. 199 of 2012 filed by his client, an application under Order 41 Rule 27 of the CPC to bring the fact of subsequent change as to reasonable requirement had been filed but the said application had been rejected summarily. But, the decision of the Apex Court is that such an application under Order 41 Rule 27 of the CPC shall be taken into consideration along with second appeal and thus, he has referred to the decisions reported in 2004 (1) SCC 497, [Bangshidhar Pal Vs. Anil Kumar Pal](#), and [Gaya Prasad Vs. Sh. Pradeep Srivastava](#). Thus, he has submitted that the said application should have been taken along with the final hearing of the second appeal.

5. Mr. Bhattacharya has raised vehement objection to such submission and he has pointed out that in fact, the application under Order 41 Rule 27 of the CPC filed by Mr. Rout's client was filed after the close of the argument on behalf of the appellant and as such, the said application was not entertained and rejected summarily by this Bench.

6. Mr. Rout has also contended that his client has wanted to show that the need of accommodation of the plaintiff has been lessened in view of the fact that one Manika Sengupta died. Another fact is that one room was allotted as study room of the two daughters. But, at present they are not the students and as such, there is no need of holding that a study room is required.

7. Upon hearing the learned Counsel for the parties and on going through the materials on record, I am of the view that so far as the review being R.V.W. No. 96 of 2012 is concerned, as to grant of limited remand, since the application under Order 41 Rule 27 of the CPC has been allowed giving an opportunity to the petitioner to amend the plaint, I had no other channel but to set aside the judgment and decree passed by the Courts below on the ground that the plaintiff has wanted to change the cause of action which is the basis for institution of a suit.

8. Accordingly, so far as the prayer for review as to order of setting aside the judgment and decree of the Courts below is concerned, in my view, the same cannot be entertained. However, since order of remand is to the effect as to amendment of cause of action, I am of the view that it shall be recorded that the remand was made on limited ground, i.e., with regard to amendment of cause of action as prayed for in the application under Order 41 Rule 27 of the CPC filed by Mr. Bhattacharya's client.

9. Accordingly, it is directed that so far as order of remand is concerned, the same is limited as to the prayer for amendment of the plaint on the cause of action only. Then, the learned Trial Judge shall proceed with the matter in the manner indicated in the judgment of the second appeal.

10. The application for review being R.V.W. No. 96 of 2012 is allowed to that extent only and of the second appeal is modified to that extent accordingly.

11. So far as the application for review filed by Mr. Rout's client is concerned, since the application by his client had been filed after the close of the argument on behalf of the plaintiff/appellant, the belated application was not entertained.

12. Moreover, so far as the second appeal is concerned, the appeal is disposed of on the substantial questions of law framed earlier and not to re-open any fact. The Court is to consider the substantial questions of law framed in the second appeal. The applicant did not pray for adducing evidence at the earlier stage upon the death of Manika Sengupta and the change of circumstances. So, the prayer was not accepted. No prayer for adjournment was sought for to prefer an appeal (SLP) against the order of rejection. In fact, no appeal was preferred against the rejection of the application. The applicant for review proceeded with the second appeal. The application for review was filed when the other application for review was filed. So, the application for review is the product of an afterthought.

13. Accordingly, I am of the view that application for review does not come under the clause that said order suffers from any error apparent on the face of the record.

So, the application for review being R.V.W. No. 199 of 2012 filed by Mr. Rout's client is rejected.

C.A.N. No. 4464 of 2012:-

14. This application is for stay of the order dated March 15, 2012 passed by this Bench in S.A. No. 399 of 2005. For the selfsame reasoning, this application stands rejected.

15. There will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.