Thakur Sree Sree Iswar Bondeswar Mahadeva Vs Arunabha Hazra

C.O. 166 of 2014

Court: Calcutta High Court

Date of Decision: Nov. 20, 2014

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 6 Rule 17#Constitution of India, 1950 â€" Article 227

Hon'ble Judges: Indrajit Chatterjee, J

Bench: Single Bench

Advocate: Chandrodoy Roy and Debasri Dutta, Advocate for the Appellant; Biswanath Chatterjee and Dipendra Nath Chunder, Advocate for the Respondent

Judgement

Indrajit Chatterjee, J.
The present petitioners who are the plaintiffs before the Learned 5th Bench of Small Causes Court at Calcutta in

Ejectment Suit No. 102 of 2003 has assailed the order No. 59 dated 27th September, 2013 as passed by the Presiding Officer of that Bench

invoking the jurisdiction of this Court under Article 227 of the Constitution of India.

2. Heard the learned advocates appearing on behalf of the parties. Perused the application giving rise to the present Civil Revisional application,

the copy of the plaint which is annexure P1 (at page 15), perused the impugned order and also the application filed under Order 6 Rule 17 of the

Civil Procedure Code, marked as P2 (at page 24 schedule at page 27). Perused also the order impugned dated 27.9.2013. The crux of the order

is stated below:

From the record, it appears that the evidence of P.W. 1 has already been completed and P.W. 1 has been cross examined in full. Now, if the

present amendment petition is allowed, then it would fulfill the lacunae of the plaintiff and the defendants will be prejudiced and shall be deprived

from their rights already accrued. Thus, in view of the above discussion, the amendment petition dated 08.05.2013 filed by the plaintiff is rejected

on contest.

3. It is the submission of Mr. Chandrodoy Roy, learned advocate appearing on behalf of the petitioners that the order is not at per with the

decisions of the Apex Court and it has violated the main principle in deciding one application under Order 6 Rule 17 of the Code. He submitted

that even at the stage of appeal such an amendment petition may be allowed if no prejudice is caused to the other side. He refers to the decision of

the Apex Court as reported in C.K. Damodaran Nair Vs. Govt of India, wherein the Apex Court held that even at the stage of appeal such an

amendment petition may be allowed and even a new plea may be raised.

4. He also refers to another decision of the Apex Court as reported in M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., wherein the Apex Court

held that even delay is of no consequence in filing such an amendment petition if it is otherwise acceptable to the Court.

5. He took me to Order 6 Rule 17 proviso of the said Code which runs thus:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite

of due diligence, the party could not have raised the matter before the commencement of trial

6. Thus, it was his submission that the present petitioners were not late in bringing out the amendment, as they were not aware regarding the name

of the person who was occupying the suit premises as sub tenant. It was his further submission and claim that the present petitioners came to know

regarding the name of that person from a proceeding pending in the Original Side of this Hon"ble Court being G.A. No. 3335 of 2009, E.C. No.

166 of 2009 in Civil Suit 208 of 1995 (Jugal Kishore Sodani v. Motimala Hazra & Ors.). It was also the submission of Mr. Roy that the ground of

subletting was very much there in paragraph 5 of the plaint but the name of the person to whom the premises was sublet was not mentioned in the

plaint even though the petitioners were diligent to find out his name.

7. Thus, he concluded his submission by saying that the learned Trial court ought not to have rejected the prayer for amendment and as such the

said order is fit to be set aside giving opportunity to the present petitioners to bring on record the name of such person by amending paragraph 5 of

the plaint.

8. In counter to all these Mr. Biswanath Chatterjee, learned advocate submitted on behalf of the opposite parties by citing a decision of the Apex

Court as reported in Mashyak Grihnirman Sahakari Sanstha Maryadit Vs. Usman Habib Dhuka and Others, wherein the Apex Court in a similarly

placed situation did not allow the amendment in a suit which was pending for almost 13 years.

9. Mr. Chatterjee also referred to the decision of the Apex Court as reported in S. Malla Reddy Vs. Future Builders Co-operative Housing

Society and Others, wherein the Apex Court did not allow the petition of the defendant praying for amendment of the original written statement

after a long lapse of time and held that it would have amounted an abuse of process of court.

10. It is true that in disposing of one amendment petition the court will see that the lis between the parties are set at rest but at the same time the

court must be cautious when such amendment is prayed for, whether the other side will be prejudiced and after the new amendment it is also the

duty of the court to see that such amendment petition comes before the conclusion of trial unless the court comes to the conclusion that inspite of

due diligence the parties could not have raised the matter before the commencement of trial.

11. In the present case before this court the property is situated at Radha Bazar and the petitioners hails from Burtolla Police Station which is not

far off from Radha Bazar area. This court is not unmindful of the fact that the petitioners came up with the litigation on two grounds, that is, default

and subletting. It is really unfortunate that the petitioners did not mention in the plaint to whom the property was sublet even though the place of

residence of the sebait is not far off from such tenanted premises. The person who is representing the trusts is one senior citizen aged about 70

years but that cannot be a mitigating factor.

12. In such a case, particularly when the suit was filed as back as in the year 2003, that is before ten years of the filing of the amendment petition.

This cannot be an example to convince this court that such person, in charge of the property acted with due diligence to come up with the said fact

before the learned Trial Court. This court has been apprised by the learned advocate of the opposite parties that already defendant No. 1 has been

cross-examined and the plaintiff No. 1 was cross-examined at least when the impugned order was passed.

13. Thus the conduct of the present petitioners cannot inspire the confidence of this court that the person who was in charge of the property was

diligent enough to bring before the court the exact picture to end the litigation at a time and to get the favour of the court of the proviso attached in

Order 6 Rule 17 of the said Code. The plaintiffs before filing of the suit or at least immediately after that must have ascertained who was enjoying

the said property to prove his case of subletting which is a major plea of the present petitioners.

14. It is true that unless the name of that person is brought on record the entire plea of the present petitioners will be only in the air but considering

the conduct of the petitioners this court does not want to exercise its discretion in favour of the present petitioners to give a fresh lease of life to the

litigation which is already about a decade old.

15. Thus in view of my discussion above, considering the fact and circumstances of this case, this court is not inclined to exercise it revisional

jurisdiction in favour of the present petitioners to bring on record the proposed amendment as sought for before the learned Trial Court.

16. The application under Article 227 of the Constitution of India stands dismissed on context but there will be no order as to costs.

17. Urgent certified copy of this order, if applied for, be given to the parties as per rules observing all formalities.