

Basudeb Guchait Vs. Shankar Kumar Das

Basudeb Guchait Vs. Shankar Kumar Das

SooperKanoon Citation : sooperkanoon.com/871840

Court : Kolkata

Decided On : Feb-16-2004

Reported in : (2004)2CALLT631(HC)

Judge : Amitava Lala, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 115 - Order 6, Rule 17 - Order 8, Rule 9; ; [Transfer of Property Act, 1882](#) - Section 108

Appeal No. : C.O. No. 32 of 2000

Appellant : Basudeb Guchait

Respondent : Shankar Kumar Das

Advocate for Def. : Abhijit Roy and ; Suvra Roy, Advs.

Advocate for Pet/Ap. : Jahar Chakraborty and ; A.K. Mondal, Advs.

Judgement :

A. Lala, J.

1. This application under Section 115 of the Code of Civil Procedure arises out of the order being Order No. 122 dated 8th October, 1999 passed by the learned Judge, 9th Bench, City Civil Court at Calcutta in an application for amendment of the Written Statement in Ejectment Suit No. 630 of 1985.

2. It appears to this Court that the suit is based on the ground of Clauses (n), (o) and (p) of Section 108 of the Transfer of Property Act. The plaintiff No. 1 was examined. As and when the plaintiff No. 2 wanted examination of the Engineer Commissioner, the defendant made an application under Order 6 Rule 17 of the Code of Civil Procedure (then existing) with a prayer for amendment of the Written Statement to the extent as follows:

'9(a) That this defendant states that during the pendency of the suit, the plaintiff has again inducted various tenants in major portion of the suit building for commercial purpose and have allowed them to operate plant and machinery in relation to their said business of the newly inducted tenants.'

3. Such application was, however, turned down by the Court on the point that the ground made in the amendment petition is vague and insufficient. The ground for the purpose of making such application is bad for filing another petition of amendment in near future. Possibly, the learned Judge was of the view that such application is nothing but a dilatory tactics. It was argued before this Court by the learned counsel appearing on behalf of the petitioner-defendant that the application under Order 6 Rule 17 of the Code of Civil Procedure can be made at any stage of the proceeding to determine the real question or controversy between the parties. On the other hand, the learned counsel appearing on behalf of the opposite party-plaintiff contended before this Court that so far as the amendment of the Written Statement is concerned, there is a specific provision in the body of the Code of Civil Procedure i.e. Order 8 Rule 9 of the Code of Civil Procedure. Therefore, Order 6 Rule 17 of the Code of Civil Procedure has no manner of application. I find the Order 8 Rule 9 speaks that no pleading subsequent to the Written Statement of a defendant other than by way of defence to a set off or counter-claim shall be presented except by the leave of the Court but the Court may at any time require from any of the parties to present the same. Therefore, the amendment of presentation of the pleading which includes both the plaint and the Written Statement can be filed at any stage subject to the satisfaction of the Court. It is so clear that such question need not necessarily be supported by citation/s. Yet several judgments were cited by the learned counsel on behalf of the petitioner/defendant such as : AIR 2000 SC614 (B.K.N. Pillai v. Pillai and Anr.),

(2002)1 Cal LT 194(HC) (Ajit Kr. Thakur v. United India Insurance Co. Ltd.), : AIR 2001 SC699 (Ragu Thilak D. John v. S. Rayappan and Ors.), 1998(2) CHN 428 (Nitya Narayan Sarkar and Ors. v. Anandamoyee Dikpati and Ors.), (2001)2 Cal LT 257(HC) (Indofer Society and Ors. v. Director General of Foreign Trade and Ors.), : AIR 2002 SC2394 (Jayanti Roy v. Doss Estate Put. Ltd.), (2002)2 WBLR (Cal) 87 (Jayanta Paul and Anr. v. Shyamal Paul and Anr.). The broad spectrum of analysis is that under both the Rules Court is empowered to apply discretion in the appropriate case. Incidentally the Order 8 Rule 9 of the Code of Civil Procedure is omitted by the amendment dated 1st July, 2002. If the intention of the legislature is properly understood it will be seen that such part is superfluous as well guided by Order 6 Rule 17 of the Code of Civil Procedure. However, the only question remains whether such amendment will alter the position or make out a new case or not. On the other hand, the application is so belated whether Court will allow the same or not. According to me, when the Rule says that at any stage such application can be made formally no question of delay will occur. But Court will always maintain two restrictions. Whether evidential part is over and whether any hardship will be caused to the defending party. I find although the suit is instituted in the year, 1985, evidential part yet to be completed. Learned counsel appearing for the petitioner-defendant that without such amendment, examination can be proceeded but they wanted to incorporate such part as quoted above specifically because of examination of Engineer/Commissioner.

4. Therefore, the fitness of the fact reveals that if amendment is allowed with an early disposal of the suit, if necessary, by day to day hearing purpose of both the parties will be subserved. There is no scope of apprehension of the Court below because of the reason that the petitioner-defendant himself is ready and willing to proceed on the basis of the proposed amendment/or with specification of such ground without amendment. Therefore, such application is a formal one. Since no new cause of action arose and the examination of the Engineer Commissioner is forthcoming, I do not find such application for amendment is absolutely baseless.

5. Therefore, the order impugned stands set aside. The appropriate step will be taken by the Registrar of the City Civil Court at Calcutta to transfer the record to the concerned Judge of the Small Causes Court to decide the question finally so

that after completion of all formalities, the suit can be heard out as expeditiously as possible. For the purpose of completion of all formalities in this regard, the desire of the Court is that one month time is good enough so that the suit can be heard out expeditiously and disposed of the same within a period of three months thereafter. The purpose of making of time bound programme is that the suit was instituted in the year 1985 and about 19 years have elapsed during the pendency of the suit before the Court below.

The application under Section 115 of the Code of Civil Procedure stands disposed of. There will be no order as to costs.

Let urgent xerox certified copy of this order, if applied for, be given to the learned counsel for the parties within the period of a fortnight from the date of putting the requisites.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com