

Present:

***MR. JUSTICE S.M. EMDADUL HOQUE***

**CIVIL REVISION NO. 3420 OF 2023.**

IN THE MATTER OF:

An application under Section 115 (4) of the Code of Civil Procedure.

- AND -

IN THE MATTER OF:

Md. Mahbubur Rahman and others  
..... Petitioners

- Versus -

Mst. Kariman Begum and others  
..... Opposite parties.

Mr. Abdul Barek Chowdhury, Advocate  
..... For the petitioners.

Mr. Dipayan Saha with  
Mr. Purnindu Bikash Das, Advocates  
.....For the opposite parties.

**Heard on: 21.04.2024 and  
Judgment on: 22.04.2024.**

The supplementary-affidavit filed at the time of hearing of this revisional application do form the part of the main application.

On an application of the petitioner Md. Mahbubur Rahman and others under section 115(4) of the Code of Civil Procedure the leave was granted and the Rule was issued calling upon the opposite party Nos.1-2 to show cause as to why the judgment and order dated 09.03.2023 passed by the Additional District Judge, 7<sup>th</sup> Court, Dhaka in Civil Revision No.72 of 2020 allowing the same and thereby reversing the judgment and order dated 31.08.2020 passed by the Assistant Judge, 6<sup>th</sup> Court, Dhaka in Title

Suit No.146 of 2007 rejecting an application under Order VI rule 17 read with Section 151 of the Code of Civil Procedure for amendment of the plaint should not be set-aside.

Facts necessary for disposal of the Rule, in short, is that the opposite parties as plaintiffs instituted title Suit No.146 of 2007 in the Court of Assistant Judge, 6<sup>th</sup> Court, Dhaka for a declaration of title and confirmation of possession of the suit land and further declaration that the R.S Khatian No.561 prepared in the name of defendant Nos.1-4 is illegal, wrong and not binding upon the plaintiff.

The defendant Nos.3(ka) and 1-6 contested the suit by filing written statement denying all the material assertions made in the plaint, the suit is barred by limitation, defect of parties and barred by Section 42 of the Specific Relief Act and there is no cause of action of the suit land.

Thereafter, the trial Court framed issues for disposal of the case.

At the trial the plaintiff side examined 03 (three) witnesses but the defendant examined none.

Subsequently, on 03.10.2019 the plaintiff opposite party filed an application for amendment of the plaint under Order VI rule 17 read with Section 151 of the Code of Civil Procedure. The said application was summarily rejected by the trial Court.

Thereafter on 22.10.2019 the plaintiff again filed an application for amendment of the plaint. The defendant side contested the application for amendment by filing written objection.

The trial Court after hearing the parties and considering the facts and circumstance of the case rejected the said application by its order dated 31.08.2020.

Against the said order dated 31.08.2020 the plaintiff initially filed review application on 30.10.2020 and the trial Court also summarily rejected the said review application on the same day.

Thus the plaintiff against the said order dated 31.08.2020 filed Civil Revision No.72 of 2020 before the learned District Judge, Dhaka under Section 115(2) of the Code of Civil Procedure. The revisional application was heard and disposed of by the Additional District Judge, 7<sup>th</sup> Court, Dhaka.

The revisional Court after hearing the parties and considering the facts and circumstances of the case allowed the revisional application and thereby setting-aside the impugned judgment and order dated 31.08.2020 of the trial Court by its judgment and order dated 09.03.2023 .

Being aggrieved by and dissatisfied with the impugned judgment and order dated 09.03.2023 passed by the revisional Court the defendant petitioner filed this revisional application under Section 115(4) of the Code of Civil Procedure and obtained the Rule.

Mr. Dipayan Saha along with Mr. Purnindu Bikash Das, the learned Advocates enter appeared on behalf of the opposite parties through vokatnama to oppose the Rule.

Mr. Abdul Barek Chowdhury, the learned Advocate appearing on behalf of the petitioners submits that the revisional Court without

considering the provision of law as well as the facts erroneously passed the impugned judgment. He submits that as per the newly amended provision of Order VI rule 17 no application for amendment shall be allowed after the trial has commenced unless the Court is of opinion that inspite of due diligence the party could not have raised the matter before the commencement of the trial. The learned Advocate submits that the amendment sought and claimed is clearly barred by limitation since challenging the city Zarip the limitation is only six years but the plaintiff filed this application after nine years.

He further submits that the amendment sought for by the plaintiff nothing but fill up the lacuna and which purely on the new facts and story and contradict the plaint and which change the nature and character of the pleadings but the revisional Court without considering the said facts of the case erroneously passed the impugned judgment and thus committed serious error in law resulting in an error in the decision occasioning failure of justice. He prayed for making the Rule absolute.

On the contrary, Mr. Dipayan Saha, the learned Advocate along with Mr. Purnindu Bikash Das, the learned Advocate appearing on behalf of the opposite parties submits that the revisional Court rightly passed the impugned judgment. He submits that the revisional Court after elaborate discussions of each and every grounds taken by the defendant petitioners addressed the same and finally took view that by the proposed amendment the nature and character of the suit has not been changed. He submits that no question of fill up the lacuna by the proposed

amendment. He further submits that the fundamental principle Governing the amendment of the pleadings that all the controversies between the parties so far as possible should be included and for avoiding the multiplicity of the proceeding the amendment of the pleadings can be allowed.

In support of his argument the learned Advocate cited the decisions of the case of *Managing Committee N.M.C. Model High School and others Vs. Obaidur Rahman Chowdhury and others reported in 31 DLR (AD)-133*, the case of *Shafiqul Islam Chowdhury (Md) and others Vs. Mostafizur and others reported in 60 DLR (AD)-42*, the case of *Khaledur Reza Chowdhury (Md) Vs. Saleha Begum and others reported in 2 BLC (AD)-20* and the case of *Abdul Motaleb Vs. Md. Ershad Ali and others reported in 18 BLD (AD)-121*. He prayed for discharging the Rule.

I have heard the learned Advocate of both the sides, perused the application of the amendment, the impugned judgment of the Courts below and the papers and documents as available on the record.

The suit is for declaration of title and confirmation of possession and further declaration that the BRS record prepared in the name of the defendant is illegal. The defendant petitioners contested the suit by filing written statement and the trial Court framed issue and that the plaintiff also adduced three witnesses but the defendant examined none.

Thereafter, the plaintiff filed an application for amendment of the pleadings. The trial Court summarily rejected the said application. Subsequently the plaintiff again filed application for amendment and the

trial Court rejected the said application by its order dated 31.08.2020. Though the plaintiff filed review application against the said order before filing the revisional application under Section 115 (2) of the Code but which was also summarily rejected.

The plaintiff opposite party than filed revisional application under Section 115(2) of the Code of Civil Procedure before the learned District Judge challenging the order dated 31.08.2020 of the trial Court. The civil revision heard and disposed of by the Additional District Judge, 7<sup>th</sup> Court, Dhaka. The petitioner filed written objection and the revisional Court after hearing the parties and considering the application and the provision of law allowed the revisional application.

It appears that the revisional Court took view that though the defendant claimed that the proposed amendment nothing but to fill up the lacuna but on considering the facts and circumstances of the case took view that since some other persons were added as defendants and filed written statement and disclosed some new facts and in such a case the plaintiff after came to know the said facts filed the application, thus no question of fill up the lacuna. The revisional Court also took view that since some of the defendants were added and they also filed written statement and disclosed some new facts and thus the plaintiff came to know the subsequent transfer of several deeds specially 72 deeds thus filed the application for amendment which does not change the nature and character of the suit.

It appears that the revisional Court discussed each and every grounds taken by the defendant challenging the amendment application.

We have considered the judgment referred by the learned Advocate of the opposite parties wherein it is found that our Apex Court took view that the subsequent facts even can be incorporated in the pleadings of an earlier suit when it was stated in the later suit and application for amendment of the plaint can be allowed if which does not change the nature and character of the suit and it is better to allow the amendment application to avoid several multiplicity of the suit.

I have also considered the subsequent amendment of order VI rule 16 of the Code and found that the aforesaid amendment does not debar the Court to allow the application for amendment after commencement of the trial if any sufficient reason and materials brought before the Court and if which does not change the nature and character of the suit.

Furthermore the proviso specifically states that if the Court satisfied that the amendment application nothing but to delay the proceedings in such a case the Court may impose cost upon the parties who filed the application for amendment.

So, from the aforesaid amendment of law it is clear that no bar to allow the amendment after the commencement of the trial if the same is required for proper disposal of the suit and for avoiding further multiplicity of the suit and if the same does not change the nature and character of the suit.

In the case of *Managing Committee N.M.C. Model High School and others Vs. Obaidur Rahman Chowdhury and others* reported in 31 DLR (AD)-133 wherein our Apex Court held: “One of the fundamental principles governing the amendment of the pleadings is that all the controversies between the parties as far as possible should be included and multiplicity of the proceedings avoided.”

And in the case of *Abdul Motaleb Vs. Md. Ershad Ali and others* reported in 18 BLD (AD)-121 wherein our Apex Court set up the principle that: “Since all rules of the Court are intended to secure the proper administration of justice, it is essential that they should be made to serve and be subordinate to that purpose so that full powers of amendment may be enjoyed and as such it should always be liberally exercised. The only limitation in allowing an amendment of the plaint is that the proposed amendment should not change the fundamental character and nature of the suit. The settled law is that amendment of pleadings may be allowed at any stage of the proceeding for the purpose of determining the real of controversy between the parties.”

Similar view has been taken in the decision of the case of *Shafiqul Islam Chowdhury (Md) and others Vs. Mustafizur Rahman and others* reported in 60 DLR (AD)-42 and the case of *Khaledur Reza Chowdhury (Md) Vs. Saleha Begum and others* reported in 2BLC (AD)-20.

Considering the facts and circumstance of the case and the impugned judgment of the revisional Court, the provision of law and the



cited decisions of our Apex Court it is my view that the revisional Court rightly passed the impugned judgment taking view to the effect:

“বিজ্ঞ ৬ষ্ঠ সিনিয়র সহকারী জজ আদালত কর্তৃক ১৪৬/২০০৭ নং দেওয়ানি মামলায় ৩১-০৮-২০২০ তারিখে প্রচারিত আদেশ বাতিল করত উপর্যুক্ত পর্যবেক্ষণের আ-লা-ক একটা যুক্তিসঙ্গত সময় নিরূপণপূর্বক বাদী রিভিশনকারীর পক্ষকে নতুন করে আরজি সং-শোধ-নর সুযোগ প্রদান করত আদেশ প্রচার এবং প্রদত্ত সময়ের মধ্যে নির্দেশিত আকারে আরজি সংশোধনের আবেদন দাখিলের ব্যর্থতায় বিজ্ঞ বিচারিক আদালতকে বিধি মোতা-বক মামলায় অগ্রসর হওয়ার নি-র্দশ প্রদান করা হ-লা।”

Having considered the aforesaid facts and circumstance of the case and the discussions as made above, I find no merit in the Rule.

In the result, the Rule is discharged without any order as to cost.

However, the trial Court is directed to allow the opposite party to file further written statement if requires after allowing the application for amendment of the pleadings.

Since this is a long pending case the trial Court is directed to dispose of the suit as early as possible preferably within 06 (six) months from the date of receipt of the order in accordance with law.

The order of stay granted earlier by this Court is hereby recalled and vacated.

Send down the Lower Court's Record at once.