

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 1501 of 2022

Sri Tapan Pal @ Tapan Paul

Vs.

Md. Abdur Rahaman & Ors.

For the petitioner :Mr. Amar Nath Das, Adv.
Ms. Pampa Ghosh, Adv.

Heard On :25.06.2024, 08.08.2024,
03.09.2024, 24.09.2024,
26.09.2024 & 04.11.2024,

Judgment On :22.11.2024

Bibhas Ranjan De, J. :

1. The instant civil Order invoking power of superintendence of this Court under Article 227 of the Constitution of India, has been filed assailing an order dated 09.03.2022 passed in connection with Title Suit no. 123 of 2000 by the Learned Civil Judge (Junior Division), 1st Court at Barasat, North 24 Parganas.

- 2.** Plaintiff/opposite party no. 1 therein filed a suit for declaration of title with consequential reliefs on 22.03.2000 and also an application under Order 39 Rule 1 & 2 of the Code of Civil Procedure (for short CPC) on 23.03.2000.
- 3.** Defendant nos.1 & 2 entered appearance in the suit by filing written statement on 07.06.2005, but defendant no. 3 did not contest the suit.
- 4.** Trial Court disposed of the injunction application under Order 39 Rule 1 & 2 CPC on 12.04.2007 directing parties to maintain status quo over the subject property.
- 5.** Defendants no. 1 & 2 preferred Misc. Appeal being no. 33 of 2007 against the order of status quo passed on 12.04.2007 by the Trial Court. On 16.05.2007, Learned Appellate Court set aside the order of status quo passed by the Trial Court, directing plaintiff/opposite party no.1 herein and defendant no.3 not to disturb the possession of appellants/ petitioner herein and proforma opposite party herein, till the disposal of the suit. Appellate Court further directed Trial Court to dispose of the suit expeditiously and order was communicated accordingly.
- 6.** After framing of issues, the suit was fixed for pre-emptory hearing on 18.02.2010 but the plaintiff/opposite party no. 1

succeeded to stall the proceedings till 22.09.2011 by filing successive adjournment applications.

- 7.** On 31.07.2012 plaintiff/opposite party no. 1 filed one amendment application with intent to incorporate one fact that his predecessors were not parties in earlier partition suit, denying earlier admissions in the instant suit. However, Learned Trial Judge allowed the prayer for amendment of plaint on 14.11.2014 with Cost of Rs. 200/-.
- 8.** Plaintiff/opposite party no. 1 herein filed amended plaint on 13.07.2015 that too without proper verification.
- 9.** Being aggrieved, defendant no. 1/petitioner herein filed an application under Order 6 Rule 18 of CPC before the Trial Court for not accepting amended plaint which was filed without complying the provision of law prescribed therefor.
- 10.** By the impugned order dated 09.03.2022 Learned Trial Judge refused the prayer under Order 6 Rule 18 CPC and accepted amended plaint only on the following ground:-

“ ...In present situation, considering the age of the instant suit, this Court is inclined to accept the amended plaint filed by the plaintiff with a view of proceeding with the instant suit without any unnecessary delay...”
- 11.** Hence this Civil Order.

At the bar

12. None appears on behalf of the opposite parties.
13. Mr. Amar Nath Das, Ld. Counsel appearing on behalf of the petitioner has drawn my notice to provision of Order 6 Rule 18 CPC and contended that the plaintiff/opposite party no. 1 herein ought to have filed amended plaint within 14 days from the date of granting leave to amend, but in this case opposite party no. 1/plaintiff filed amended plaint almost after 8 months that too without any prayer for extension of time.
14. Mr. Das further assailed the amended plaint which was filed without any verification by the plaintiff/opposite party no. 1 herein.

Decision of this Court:-

15. The issue involved in this Civil Order calls for reproduction of the provision of Order 6 Rule 18 of the CPC which runs as follows:-

“18. Failure to amend after order.-

If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.”

- 16.** Therefore, Order 6 Rule 18 CPC mandates that if a party who has obtained an order for leave to amend does not amend within the time limited by the order, or within 14 days if no time is specified, he shall not be permitted to amend after the expiration of such time unless the time is extended by the Court.
- 17.** Further, provision of Section 148 of the CPC empowers the Court to enlarge the time fixed for doing any act prescribed by the Code, even after the original period has expired.
- 18.** Therefore, conjoint reading of the provisions of Order 6 Rule 18 and Section 148 of the CPC, clearly reveals that the Court can extend the time for filing an amended plaint even after expiry of the originally fixed period, **provided the party seeking amendment demonstrates a proper case, obviously, by making an application before the Court granting leave to amend the pleading.**
- 19.** It is also well settled that the Court can accept the amended plaint beyond specified period without a formal prayer for extension, if **there is bonafide mistake in failing to file within time limit.**

20. Here, in this case, the Ld. Trial Court accepted the amended plaint only on the ground of long pendency of the suit ignoring the mandatory conditions discussed in paragraph nos. 17 & 18. Thereby, the order impugned, in my humble opinion, suffers from sheer illegality.

21. Coming to the other issue of verification of pleading i.e. amended, I find no other option but to pry into the track of the provision of Order 6 Rule 15A of the CPC which runs as follows:-

“15A. Verification of pleadings in a commercial dispute—

(1) Notwithstanding anything contained in Rule 15, every pleading in a commercial dispute shall be verified by an affidavit in the manner and form prescribed in the Appendix to this Schedule.

(2) An affidavit under sub-rule (1) above shall be signed by the party or by one of the parties to the proceedings, or by any other person on behalf of such party or parties who is proved to the satisfaction of the Court to be acquainted with the facts of the case and who is duly authorised by such party or parties.

(3) Where a pleading is amended, the amendments must be verified in the form and manner referred to in sub-rule (1) unless the Court orders otherwise.

(4) Where a pleading is not verified in the manner provided under sub-rule (1), the party shall not be permitted to rely on such pleading as evidence or any of the matters set out therein.

(5)The Court may strike out a pleading which is not verified by a Statement of Truth, namely, the affidavit set out in the Appendix to this Schedule.”

- 22.** It is needless to mention that the order 6 Rule 15A of the CPC clearly mandates the verification of pleadings by way of an affidavit. This requirement ensures that the statements made in the pleadings are authenticated and verified under oath and in absence of verification, the pleadings cannot be relied upon. In this situation, the Court may reject the pleading or require the party to rectify the defect. Therefore, the issue of verification underscores the importance of strict compliance with the verification mandate.
- 23.** However, pursuant to the observations made in foregoing paragraphs particularly paragraphs 18, 19 & 20, the impugned order is not sustainable in law.
- 24.** As a sequel, the instant Civil Order being no. 1501 of 2022 stands allowed. The order dated 09.03.2022 passed by Ld. Civil Judge, Junior Division in Title Suit no. 123 of 2000, stands set aside.
- 25.** Considering the pendency of the years, Learned Trial Court is directed to dispose of the Title Suit no. 123 of 2000 positively within six (6) months from the date of

communication of this Order, without giving any unnecessary adjournment to either of parties.

- 26.** Interim order, if there be any, stands vacated.
- 27.** Connected applications, if there be, also stand disposed of accordingly.
- 28.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 29.** 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.]