

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**C.O. No. 1146 of 2021
Exide Industries Limited
(formerly known as Chloride India Limited)
Vs.
Urmila Pasari and others**

For the petitioner : Mr. Surojit Nath Mitra,
Mr. P.K. Dutt,
Mr. Rupak Ghosh,
Mr. S.K. Dutt,
Mr. S. Banerjee

For the
opposite party Nos.1,2 & 3 : Mr. Jayanta Kumar Mitra,
Mr. Suddhasatva Banerjee,
Ms. Radhika Singh

Hearing concluded on : 29.06.2021

Judgment on : 05.07.2021

Sabyasachi Bhattacharyya, J:-

1. The present application under Article 227 of the Constitution of India arises from a suit for eviction under the West Bengal Premises Tenancy Act, 1997, filed inter alia on the ground of reasonable requirement. The defendant in the said suit has challenged an order of amendment of the plaint taken out by the substituted and transposed plaintiffs.
2. The eviction suit was initially filed by one Smt. Surma Devi Pasari on the ground of personal requirement of the plaintiff as well as her

daughter-in-law, the original proforma defendant Savitri Devi Pasari as well as their family.

- 3.** Subsequently, both the original plaintiff and proforma defendant No. 2 expired during pendency of the suit.
- 4.** Savitri Devi Pasari, prior to her demise, had executed a Will in favour of the opposite party Nos. 1 to 3. The executor of the said Will obtained probate of the said will dated October 26, 2009 on October 8, 2013. The executor, thereafter, executed a registered deed of assignment in favour of the legatees, that is, opposite party Nos. 1 to 3.
- 5.** The opposite party Nos. 1 to 3 took out an application for being substituted in place of proforma defendant No. 2 and sought transposition to the category of plaintiffs in the suit, since the suit property was bequeathed to the opposite party Nos. 1 to 3.
- 6.** Such application was initially captioned to be under Order I Rule 10(2) of the Code of Civil Procedure. Upon the same being dismissed, such order was challenged and ultimately the matter went up to the Supreme Court. The Supreme Court, vide order dated February 4, 2020 passed in Civil Appeal No. 1005 of 2020, allowed opposite party Nos. 1 to 3 to be substituted within the purview of Order XXII Rule 10 of the Code and, by the same order, directed transposition of the said opposite parties as plaintiffs in the suit. The Supreme Court remanded the matter to the High court for fresh consideration and directed the eviction suit itself to be decided expeditiously, preferably

within a maximum period of six months from the date of receipt and/or production of the said order before the court concerned.

- 7.** Consequent to the transposition, opposite party Nos. 1 to 3 took out an application for amendment of the plaint, which was allowed on consent. In Paragraph 6 of the amended plaint, it was specifically pleaded that the said premises were initially reasonably required by Savitry Devi Pasari for her own occupation as well as for the occupation of her family and presently by the plaintiffs (opposite party Nos. 1 to 3) and their respective families, having no reasonable suitable accommodation at Calcutta.
- 8.** Subsequently, the plaintiffs/opposite party Nos. 1 to 3 took out a second amendment application seeking to introduce the exact nature of the requirement of the said opposite parties and their families in elaborate details.
- 9.** The defendants contested such application by filing a written objection to the amendment application.
- 10.** Vide impugned order dated March 31, 2021, the Trial Judge allowed the second amendment application, against which the present revision has been preferred by the first defendant.
- 11.** Learned Senior Counsel appearing for the petitioner contends that, by the second amendment, the entire cause of action was sought to be substituted by a new cause of action which, according to counsel, is not permissible in law. In this context, counsel places reliance on *Smt.*

Phool Rani and Ors. Vs. Sh. Naubat Rai Ahluwalia reported at (1973) 1 SCC 688. In the said case, it was observed by the Supreme Court that the requirement pleaded in the ejectment application on which the plaintiff had founded his right to relief in his requirement would assume a complexion wholly beyond the compass of the original cause of action in the event the member of the family were subsequently permitted to amend the plaint and introduce their own personal requirement in the pleadings. Such a personal cause as the original cause of action, it was held, must perish with the plaintiff.

- 12.** Learned Counsel next places reliance on *Kanda and Ors. V. Waghu*, reported at *AIR 1950 PC 68*, where it was held by a Three-Judge bench of this court that an amendment which could involve setting up a completely new case could not be allowed.
- 13.** Learned Counsel appearing for the petitioner next cites the case of *Manika Banerjee V. Biswabikash Sengupta* , reported at *AIR 1986 CAL 113* for the proposition that the plaintiff should not be allowed to make out two different cases at two stages of the proceedings, on which ground the plea for amendment of the plaintiff was rejected. In *Modi Spinning and Weaving Mills Co. Ltd. & Anr. V. Ladha Ram & Co.*, reported at *AIR 1997 SC 680*, the Supreme Court held that the application for amendment was not *bona fide* in as much as the plaintiff sought to resile from an admission made in earlier pleadings. Contending that such proposition ought to be adopted in the present

case as well, learned Senior Counsel argues that the Trial Court acted without jurisdiction in allowing the second amendment of plaint.

- 14.** Learned Senior Counsel for the opposite party Nos. 1 to 3 contends that there was no change in the cause of action by virtue of the second amendment in view of the specific order of substitution and transposition of opposite party Nos. 1 to 3 dated February, 4, 2020 passed by the Supreme Court.
- 15.** It is further contended that since the first amendment, which was allowed on consent, already included the basis of the personal requirement of the present plaintiffs, that is, the opposite party Nos. 1 to 3, the second amendment was only in the nature of an elaboration of such pleadings upon furnishing requisite details. Since such pleadings were necessary for proper and complete adjudication of the suit, the Trial Court was justified in allowing the second amendment. Learned Senior Counsel for the opposite party Nos. 1 to 3 places reliance on the judgment of *Ramesh Kumar Agarwal V. Rajmala Kxports Private Limited & Ors.*, reported at (2012) 5 SCC 337, in support of the proposition that amendments which merely introduce facts/evidence in support of the contention already pleaded do not alter the cause of action of the suit and, as such, ought to be allowed.
- 16.** Next placing reliance on *B.K.N. Narayana Pillai V. P. Pillai and Ors.*, reported at (2000) 1 SCC 712, wherein the Supreme Court, relying on previous judgements, reiterated that the power to allow an amendment is wide and may at any stage be appropriately exercised

in the interest of justice, the law of limitation notwithstanding. It was further observed that the expression 'cause of action' in the context does not mean 'every fact which is material to be proved to entitle the plaintiff to succeed'. For the limited purpose of considering an amendment, it only means, it was held, a new claim made on a new basis constituted by new facts.

- 17.** Thus, Learned Senior Counsel argues that it is a well-settled proposition of law that amendments in the nature as sought to be introduced in the present case by way of a second amendment application ought to be allowed for the ends of justice.
- 18.** Upon considering the submission of the parties as well as the materials on record and the cited reports, it is evident that the Supreme Court *prima facie* sanctioned the rights of opposite party Nos. 1 to 3 to proceed with the suit as transposed plaintiffs, thereby recognising the maintainability of the suit at their instance.
- 19.** That apart, what clinches the issue in favour of the opposite party Nos. 1 to 3 is that the first amendment to the plaint, which was allowed on consent, categorically averred the requirement of the present plaintiffs and their respective families, having no reasonable suitable accommodation at Calcutta. Paragraph 6 of the first amended plaint clearly discloses such pleadings.
- 20.** By virtue of the second amendment, the present plaintiffs only sought to introduce and elaborate further facts within the four corners of the amended plaint. The amendments sought, let alone introducing a

'new' cause of action, were only in the nature of elaborating the pleadings already existent after the first amendment. Since the requirement of the present plaintiffs had already been pleaded in the first amendment, there cannot be any scope of perceiving the second amendment as introduction of a new set of facts, comprising a fresh cause of action. Rather, as correctly observed by the Trial Court in the impugned order, the said amendment was merely clarificatory in nature and was necessary to adjudicate the dispute between the parties effectively.

- 21.** In any event, the petitioner and the other defendants were given the liberty to file additional written statement, thereby denying the amended pleadings.
- 22.** It is well-settled that, while adjudicating an amendment application, the merits of the proposed amendment cannot be gone into. In view of the second amendment to the plaint in the present case falling squarely within the ambit of the pleadings already on record and are necessary for a complete determination of the questions in controversy in the suit, the said amendment was necessary and rightly allowed by the Trial Court. There arises no question of substitution of a new cause of action, in view of the above discussions.
- 23.** Thus, the revisional application fails. C.O. 1146 of 2021 is dismissed, thereby affirming the impugned order dated March 3, 2021 passed by the Civil Judge (Senior Division), Fourth Court at Alipore, District: South 24-Parganas in Title Suit No. 41 of 2008.

24. However, for the ends of justice, the time for filing additional written statement by the defendants with regard to the second amendment is extended for a fortnight from date.
25. There will be no order as to costs.
26. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)