

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

C.O. 3357 of 2025

**Anita Sikder
Vs.
Kalpana Kundu**

For the Petitioner : Mr. Chandra Sekhar Banerjee
: Mr. Shamit Dutta

For the Opposite Party : Mr. Ayan Banerjee
: Mr. Ajeyo Choudhury

Heard on : **17.08.2026**

Judgment on : **25.08.2026**

Uploaded on : **25.08.2026**

Rai Chattopadhyay, J. :-

1. The question raised by the revisionist/defendant as to the legality and propriety of the order dated April 16, 2025, of the Civil Judge (Junior Division) 1st Court at Sealdah, in EJ-60 of 2021, is germane with the issue whether the date of knowledge of the defendant is a relevant factor concerning the defendant's application under Section-7(2) of the West Bengal Premises Tenancy Act, 1997.
2. Fact remains that the opposite party/plaintiff/landlord has filed the said ejectment suit before the learned Trial Court. The petitioner/defendant/tenant has filed her application

under Section-7(2) of the West Bengal Premises Tenancy Act, 1997, in the said suit, on May 19, 2022. Such application of the defendant was allowed by the Court and the petitioner/defendant paid rent before the learned Trial Court, since then.

3. On November 1, 2022, the petitioner/defendant filed her written statement in the Court.
4. On July 26, 2024, she has filed her application under Order-VI Rule-17 read with section 151 of the Code of Civil Procedure, seeking amendment of the application under Section-7(2) of the said Act. The defendant sought to incorporate the following '*Schedule of Amendment*':

"2(A) That from local whispering the defendant has come to know the plaintiff has filed the ejectment suit against the defendant and thereafter the defendant has come to the Ld. Court and to contact with her Ld. Advocate and to make necessary search through her Ld. Advocates clerk and thereafter the defendant has gathered information about the suit on 25-4-2022 and for the 1st time came to know about the suit on 25-4-2022 and to obtain information slip to that effect and thereafter your petitioner/defendant make appearance in this suit and it is needless to mention here the defendant never received any summons of this suit and from the knowledge of the suit the defendant within time filed the petitions u/s. 7(1) & 7(2) of the W.P.T. Act, 97."

5. The said application for amendment of the defendant was heard by the Court on April 16, 2025 and the impugned order was passed rejecting the defendant's prayer as above. The said order is challenged in the instant revision.
6. Mr. Chandra Sekhar Banerjee, learned advocate for the petitioner has submitted that the amendment sought for by the defendant pertains to the most relevant fact of the actual

time of acquiring knowledge by the defendant regarding the suit being filed. The petitioner has submitted that it was hasty though bona fide on part of the said defendant, that she could not furnish such information at the very first instance. It is submitted that incorporation of the proposed amendment would only serve the purpose of enabling the Court to adjudicate the controversy before it in a complete manner. Also, that the proposed amendment ought not to change the nature and character of the defendant's application under Section-7(2) of the Act of 1997 or cause any injustice or prejudice.

7. The impugned order of the Trial Court dated April 16, 2025 is attacked that the same suffers with jurisdictional error and also erroneous application of law. That, an otherwise cogent proposed amendment of Section-7(2) petition of the defendant has been turned down by the Court, failing to consider as to how on legal perspective, the same stands as, just and valid. That the Court has failed to appreciate that the defendant's knowledge and her appearance in the proceeding is only co-related. Hence, the petitioner/defendant has prayed for setting aside of the impugned order as above and that her prayer under Order-VI Rule-17 may be allowed.
8. The opposite party/plaintiff being represented by Mr. Ayan Banerjee, learned advocate, has raised strong objection to such contention and prayer of the revisionist/defendant. With reference to the provisions under Sections-7(1) and (2) of the Act of 1997, Mr. Banerjee has submitted that essential criteria required to be fulfilled under the said provisions of law are actually otherwise ant connected at all

with the knowledge of the defendant about the suit. He submits that knowledge of defendant of the suit is not a factor necessary under the statute and is only unrelated and non-relevant. He says that the defendant's knowledge is not the legal test under the said provisions of law and not at all relevant and material as to the real controversy between the parties in a proceeding under Sections-7(1) and (2) of the Act of 1997. He submits that accordingly a proposed amendment to incorporate about the defendant's knowledge of the suit is unwarranted. Therefore, for the reasons as above, the opposite party/plaintiff has supported the order of the learned Trial Court, challenged in the instant revision.

9. In support of his argument Mr. Banerjee has relied on the following three judgments:

(i) ***Bijay Kumar Singh and Others versus Amt Kumar Chamaria and Another* [(2019) 10 SCC 660];**

(ii) ***Nrisingh Prosad Paul versus Steel Products Ltd* [AIR 1953 Cal 15];** and

(iii) ***Nur Islam Mondal versus Kasem Ali Mondal & Others* [(2012) 5 CHN 38].**

10. In the impugned order dated April 16, 2025, learned Trial Court, while considering the application filed by the defendant under Order VI, Rule 17 of the CPC for amendment of his application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 has found that on a bare perusal of the provision of statute as above, it sees no scope and relevance as regards the fact of gathering knowledge by the defendant of an eviction suit. On this basis, the Court rejected such application, by dint of the

said impugned order. Hence, the order is challenged as the petitioner defendant is aggrieved about the same.

11. The entire basis of the revisionist's prayer is founded upon the proposition that the date on which she acquired knowledge of the institution of the ejectment proceeding is a material fact for the purpose of her application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997. The proposition, however, does not find support either in the statutory scheme or in the law governing the exercise of jurisdiction under Order VI Rule 17 of the Code of Civil Procedure.
12. Section-7(1) of the Act of 1997 prescribes the statutory obligation of a tenant, in a proceeding instituted by the landlord for eviction on any of the grounds referred to in Section 6, to pay or deposit the arrears of rent, together with interest, within one month of the service of summons or, where the tenant appears without service of summons, within one month of such appearance. Section-7(2) of the Act, where there is a dispute as to the amount of rent payable, requires the tenant, within the time specified in sub-section (1), to deposit the amount admitted by him to be due together with an application for determination of the rent payable. The statute thus identifies with precision the events which attract the statutory obligation, namely, service of summons or appearance in the proceeding, and not some subjective or separately asserted date of knowledge of the institution of the suit.
13. The distinction is not merely semantic. A statutory provision must be construed by reference to the language which the legislature has deliberately employed. Where the legislature

has made service of summons and, in the alternative, appearance in the proceeding the relevant triggering events, the Court cannot substitute for either of those events an independently asserted and factually variable concept of "knowledge". Such an exercise would amount not to interpretation but to legislation by judicial fiat. The settled doctrinal principle is that where the language of a statute is clear, the Court must give effect to the statutory command and cannot introduce into the provision words or conditions which the legislature has consciously omitted.

14. The Supreme Court, in ***Bijay Kumar Singh (supra)***, while examining the scheme of Section 7 of the Act of 1997, held that the requirements contained therein are mandatory and that the tenant seeking the statutory protection against eviction for non-payment of rent must scrupulously comply with the statutory requirements. That, the statutory protection is consequently conditional upon compliance with the statutory mechanism and cannot be enlarged by importing considerations which are not contemplated by the enactment. The ratio of ***Bijay Kumar Singh (supra)*** is of significance not because the said decision directly dealt with an application for amendment of a Section 7(2) application, but because it authoritatively declares the statutory architecture within which such an application has to operate. Once the Supreme Court has held that Section 7 is a mandatory statutory scheme and has identified the statutory events and requirements governing the tenant's entitlement to protection, a fact which does not constitute part of that statutory test cannot, merely by being pleaded

through an amendment, be elevated into a jurisdictional consideration.

15. In the present case, therefore, the proposed amendment does not cure an accidental omission in a material fact constituting the statutory foundation of the application under Section 7(2). Rather, it seeks to introduce the defendant's alleged date of knowledge of the suit. The question before the Court under Section 7(2), however, is not when the tenant subjectively came to know that a suit had been instituted. The statutory enquiry is whether the tenant complied with the requirements prescribed by Sections 7(1) and 7(2), including the obligation arising upon service of summons or appearance and, where applicable, the deposit of admitted arrears accompanied by an application for determination of the rent payable. Knowledge is therefore not the statutory test. The argument that knowledge and appearance are "co-related", does not alter the legal position as above.
16. The principles governing amendment of pleadings under Order-VI Rule-17 of the Code of Civil Procedure do not assist the revisionist. It is undoubtedly true that the power of amendment is intended to advance the cause of justice and that amendments necessary for determining the real controversy should ordinarily receive a liberal consideration. But the power is not unfettered. The fundamental test remains whether the proposed amendment is necessary for adjudication of the real controversy. An amendment which introduces a fact having no bearing upon the legal test applicable to the proceeding, is neither necessary nor useful for such adjudication.

17. The decision of the Calcutta High Court in **Nrisingh Prosad Paul (supra)** relied upon by the opposite party, states an enduring principle in this regard, that the test of 'real controversy' and not that of absence of prejudice, is the actual test which the Court has to determine. The judgment of this Court in **Nur Islam Mondal (supra)** also reinforces the same. Hence, it can be stated that pleadings cannot be amended to become an instrument for altering the statutory test applicable to the dispute.
18. The contention that no prejudice would be caused to the landlord is also insufficient. The absence of prejudice is only one consideration in an application for amendment. It cannot substitute the primary requirement that the amendment must be necessary for determining the real controversy. As was recognised in **Nrisingh Prosad Paul (supra)**, an immaterial and useless amendment is not rendered necessary merely because its introduction may not occasion demonstrable prejudice to the opposite party.
19. The revisional jurisdiction does not warrant interference with the impugned order merely because another view on the desirability of the amendment might conceivably be taken. The learned Trial Court considered the amendment and rejected it. Unless the order discloses a jurisdictional error, perversity, patent illegality or failure to exercise jurisdiction vested in it, the revisional Court ought not to substitute its own discretion for that of the Trial Court. In the present matter, no such jurisdictional infirmity is demonstrated. On the contrary, the conclusion reached by the learned Trial Court is consistent with the statutory scheme and with the principles flowing from **Bijay Kumar**

Singh (supra), Nrisingh Prosad Paul (supra) and ***Nur Islam Mondal (supra)***. It follows that the revisionist has failed to demonstrate either that the proposed amendment was necessary for determining the real controversy or that refusal of the amendment has occasioned any failure of justice. The impugned order dated April 16, 2025, therefore, does not suffer from any jurisdictional error or patent illegality warranting interference in revisional jurisdiction.

- 20.** The revisional application accordingly fails and is dismissed. The order dated April 16, 2025, passed by the learned Civil Judge (Junior Division), 1st Court at Sealdah, in EJ-60 of 2021 is affirmed. The learned Trial Court shall proceed with the ejectment suit in accordance with law and as expeditiously as possible.
- 21.** Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)