

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRP NO.97 OF 2015

1. Sri Himangshu Saha,
S/o Sri Haran Chandra Saha,
R/O Netaji Subhas Road(Surya Road Extension),
P.O. Agartala, Agartala,
West Tripura.

2. Sri Babul Pal,
S/O Late Birendra Ch. Paul,
R/O Netaji Subhas Road(Surya Road Extension),
P.O. Agartala, Agartala,
West Tripura.

3. Sri Liton Lodh,
S/O Late Surja Kr. Lodh,
R/O C/O Aswini Traders,
Netaji Subhas Road,
P.O. Agartala, Agartala,
West Tripura.

4. Sri Kishore Roy,
S/O Late Phani Bhushan Roy,
R/O Village-Chandrapur,
P.O. Dhaleswar, Agartala,
West Tripura.

..... *Petitioners*

- *V/s* -

1. Smti. Nilima Saha,
W/O Sri Bijoy Saha,
R/O Vidyasagar Chowmuhanani,
P.O. Jogendranagar,
Agartala, West Tripura.

..... *Respondent*

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the petitioners : Mr. D.K. Biswas, Advocate

For the respondent : Mr. D. Chakraborty, Sr. Advocate
Mr. H. Laskar, Advocate

Date of hearing & delivery
of Judgment & order : **21.09.2015.**

Whether Fit for Reporting :

Yes	No
	✓

JUDGMENT & ORDER(ORAL)

Heard learned counsel, Mr. D.K. Biswas for the petitioners and learned senior counsel, Mr. D. Chakraborty, assisted by learned counsel, Mr. H. Laskar for the respondent.

2. The petitioners were arrayed as respondent Nos.2, 3, 4 and 5 in case No.Misc.RCC 14/2014 before the Rent Control Court, Agartala, West Tripura. That case was instituted by the present respondent, Smt. Nilima Saha as petitioner. In course of the trial of that RCC proceedings, at the stage of recording evidence of the respondents, *i.e.* the petitioners herein, it was revealed by the petitioners herein that the statement made in para 4 was not correct and therefore an amendment petition was filed before the Rent Control Court seeking amendment of para 4 of the written statement.

3. By impugned order dated 02.07.2015 that prayer of amendment has been rejected by the Rent Control Court and hence this revisional application under Article 227 of the Constitution of India.

4. It is submitted by Mr. Biswas, learned counsel for the petitioners that the petitioners narrated the facts to the learned counsel for preparation of the written statement and while preparing the written statement learned counsel of the petitioners could not comprehend the facts in its true meaning and as a result in para 4 of the written statement it was mentioned "*Thus as many as 34 persons(members of the Maharajganj grocery merchant Association) are due to receive back from the Respondent-2 a total sum of Rs.17,49,855.00*".

It is submitted by Mr. Biswas, learned counsel that the above averment ought to have been in another form—"That the answering Respondents and others(in all 34 persons) acted in good faith and sold in total, goods worth Rs.17,49,855.00". It is submitted by learned counsel, Mr. Biswas that the amount remained same but just the contents since the counsel could not comprehend properly was not properly reflected in the written statement and therefore the amendment is necessary for fair ends of justice.

5. Learned senior counsel, Mr. Chakraborty has submitted that the earlier statement in the written statement was verified by the petitioners saying that it was true statement. Now the petitioners cannot come with a petition that the earlier statement was an incorrect statement. Further it is at a very belated stage

and therefore at this stage amendment cannot be allowed to change the pleadings already made in the written statement.

6. It is an admitted position that the amendment was sought at the stage of recording evidence of the respondents. The petitioners contended that it was a mistake on the part of the counsel of the petitioners that the counsel could not clearly comprehend the contents or the fact of the case of the petitioners and therefore narrated the fact in an incorrect way and such correction of the fact will not affect the respondent, *i.e.* the original petitioner.

7. Mr. Chakraborty, learned senior counsel has fairly admitted that the statement made in either way will not affect the case of the original petitioner but he has opposed the prayer of amendment since it is at a belated stage.

8. The *proviso* to *Order VI Rule 17* of CPC has prescribed that the amendment should not be allowed after the trial is commenced unless the Court comes to a conclusion that in spite of due diligence the party could not have raise the matter before the commencement of the trial. No doubt, the trial has already commenced. It is the case of the petitioners that they communicated the fact to the lawyer in one manner but at the time of drafting there was a mistake by the concerned lawyer which escape their notice while they were verifying the written statement.

They could not comprehend that the statement was incorrectly written in the written statement.

9. No doubt, the amendment should not be allowed after the trial commenced unless the Court is satisfied that in spite of due diligence the parties could not have raised the matter before commencement of trial. It is stated in the amendment petition that when examination by way of affidavit-in-chief was under preparation then it was noticed that the statement was not made in a correct manner.

10. Under such circumstances, for fair ends of justice to decide the issues involved in the case, I think the amendment may be allowed and in that case the original petitioner will be at liberty to amend the pleading and adduce relevant evidence. The revisional application is therefore allowed subject to payment of a cost of ₹1,000/- to the respondent.

11. The impugned order dated 02.07.2015, therefore is interfered and set aside. The learned Civil Judge, Jr. Division, Court No.1, Agartala is directed to allow the amendment as sought for subject to payment of a cost of Rs.1,000/- to the respondent, *i.e.* the original petitioner.

12. The revisional application accordingly stands disposed of.

13. Send a copy of this order to the Court of learned Civil Judge, Jr. Division, Court No.1, Agartala.

JUDGE