

**Circuit Bench of Calcutta High Court
at Jalpaiguri**

31 **29.08.**
&
32 **2019**
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**C.O. 62 of 2019
AND
C.O. 63 of 2019**

**Sri Dulal Chandra Dev & Anr.
Versus
Sri Aparesh Saha**

Mr. Rahul Hoare.
.....for the petitioner.

Both matters are taken up together, since they arise from analogous suits and the orders impugned respectively in the two revisional applications are similar.

By the impugned order, the prayer of the defendant/petitioner of filing an additional written statement was rejected on the ground that Order 8 Rule 9 of the Code of Civil Procedure was not the appropriate provision for carrying out the necessary incorporation of additional averments in the defence pleadings.

Learned counsel for the petitioner argues that filling of an additional written statement is not restrictive in its nature and can be resorted to even at the hearing stage.

However, it appears that, although the reasoning in the impugned order was somewhat unhappy, the conclusion arrived at by the trial judge

was justified, since the petitioners had attempted to introduce new pleadings in the written statement at the hearing stage, in the garb of filing additional written statement. In this manner, the petitioners apparently sought to by-pass the restriction stipulated in the proviso to Order 6 Rule 17 of the Code which is not permissible in law. The petitioners could not achieve indirectly, what they could not directly under the law.

Accordingly, C.O. 62 of 2019 and C.O. 63 of 2019 are disposed of by granting the petitioners liberty to approach the trial Court with an appropriate application under Order 6 Rule 17 of the Code of Civil Procedure, for amendment of his written statement for introduction of the new pleadings which they sought to introduce by way of an additional written statement Order 8 Rule 9 of the Code of Civil Procedure. However, in the event such an application is made, the trial Court will independently adjudicate the same in accordance with law, subject to satisfaction of the proviso to Order 6 Rule 17 of the Code of Civil Procedure, on his own merits, without being influenced in any manner by any of the observations made herein, upon hearing both sides.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, shall be given to the parties upon compliance of usual formalities.

(Sabyasachi Bhattacharyya, J.)