

C.O. 2954 of 2019

**Gyan Nidhi Trust
-Vs-
Arindam Roy & Ors.**

Mr. Suddhasatva Banerjee,
Ms. Radhika Singh,
Ms. Suchandra Dey.
...for the petitioner.

Mr. Partha Pratim Roy,
Mr. Dyutiman Banerjee.
....for the opposite party nos.1 to 5.

Mr. Satyajit Talukder.
....for the opposite party no.7/
K.M.D.A.

The matter has been brought to the list for extension of interim order at the instance of the petitioner.

However, by the consent of the parties, this revisional application is taken for final disposal.

The present application under Article 227 of the Constitution of India is at the instance of defendant no.3 in a suit for recovery of possession and is directed against order dated July 16, 2019 passed by the 3rd Additional Court of the learned Civil Judge (Junior Division) at Alipore, District-24-Parganas (South) in Title Suit No. 46 of 2013.

The learned Trial Judge by the order impugned has allowed an application under Order VI Rule 17 of the Code of Civil Procedure filed by the plaintiffs seeking amendment of plaint.

The plaintiffs by the proposed amendment

are seeking to incorporate some facts relating to a suit being Title Suit No. 14071 of 2011 pending before the 1st Court of the learned Civil Judge (Junior Division) at Alipore on the ground that the said facts came to the knowledge of the plaintiffs subsequently.

Affidavit as to the examination-in-chief on behalf of the plaintiffs was filed on April 04, 2017 and in the said examination-in-chief, at paragraph 53, although the fact of the pendency of the said suit of 2011 was disclosed but the application for amendment was filed long time thereafter on May 17, 2018 after commencement of the trial of the suit, without offering any explanation justifying the said delay.

The petitioner in the application for amendment at paragraph 2 has stated that the pendency of the said suit of 2011 came to the knowledge of the petitioner just before starting of the evidence-in-chief in the present suit.

It is therefore apparent that the amendment sought for is hit by the restriction prescribed under the proviso appended to Order VI Rule 17 of the Code in allowing an application for amendment after commencement of the trial of the suit.

The learned Trial Judge, by a complete unreasoned order allowed the said application for

amendment without considering the said restriction.

The order impugned for the aforesaid reason is not sustainable and is accordingly set aside.

The application filed by the plaintiffs for amendment of the plaint is rejected.

C.O. 2954 of 2019 is allowed without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)