

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

C.O. No. 3490 of 2019

**Subrata Das
-Vs.-
Smt. Jayanti Das & Ors.**

Mr. Sarbesh Pal
...for the petitioner

Despite service, none appears on behalf of the opposite parties.

Affidavit-of-service is already on record.

Learned counsel for the petitioner submits that the trial court acted without jurisdiction in refusing the petitioner's applications for repair of the suit premises and for amendment of the plaint without disclosing appropriate reasons therefor.

Upon hearing learned counsel for the petitioner and going through the records, it is evident from the impugned order that the reason given for refusing the prayer for repair is cryptic in nature. The trial court did not discuss the necessity of the amendment application for a proper and complete determination of the

disputes involved in the suit, nor the necessity of repair, if any.

As averred in the application under Article 227 of the Constitution itself, particularly in paragraph 3 of the same, there are cracks on the walls of the said shop room as well as damage on the floors, apart from water soaking through the roof and the beams supporting the roof being in a precarious condition.

The amendment, on the other hand, seeks to change the description of the suit property, which was initially described to be one shop room, and to incorporate the averment of existence a small room having a separate gate attached to the shop room. It is for the plaintiff in the suit to prove on evidence the contentions in the plaint. However, it is well settled that at the juncture of deciding an amendment application, the merits of the proposed amendment cannot be gone into. Even if the description of the suit property is permitted to be changed in the pleadings, the same does not, by any stretch of imagination, alter the nature and character of the suit itself and/or the reliefs claimed therein.

That apart, as made out in the averments in the present revisional application, the repair

sought by the petitioner is innocuous in nature, but extremely urgent, since the life and limb of the petitioner and his employees will be in jeopardy in the event such repair work is not carried out.

Hence, I cannot see any prejudice to the opposite parties in permitting the plaintiff/petitioner to repair the shop room at his own cost, without changing the nature and character of the suit property and/or claiming any equity in the repaired portion otherwise.

In any event, the fundamental right to life of the petitioner is at risk in view of the apparently precarious condition of the suit shop room.

Whatever may be the ultimate outcome of the suit, there was no justification for the trial judge to preclude the petitioner from amending the plaint, particularly since trial has not yet commenced in the suit and/or to refuse permission to repair at the own cost of the petitioner.

In view of absence of representation on behalf of the opposite parties despite service, there is no option but to dispose of the revisional application *ex parte*.

C.O. No. 3490 of 2019 is, thus, disposed of by setting aside Order No. 27 dated June 12, 2019, passed by the Thirteenth Bench, City Civil Court at Calcutta in Title Suit No. 550 of 2017, thereby permitting the petitioner to carry out necessary repair work, at the petitioner's own cost, in terms of the prayer of the petitioner's repair application in the court below, without changing the nature and character of the suit property, without claiming any future equity in the property for such repair work. Such repair work shall be completed at the earliest, upon prior notice to the learned advocate appearing for the opposite parties in the court below.

The application for amendment of plaint, under Order VI Rule 17 of the Code of Civil Procedure, filed by the petitioner, is also allowed, thereby permitting the plaintiff/petitioner to amend the plaint in accordance with the schedule of the petitioner's amendment application filed in the court below.

The plaintiff shall file an amended plaint accordingly within a fortnight from date. Additional written statement, if any, shall be filed by the defendants/opposite parties within a fortnight thereafter.

The learned advocate appearing for the petitioner shall communicate this order by way of advocate's letters, accompanied by server copies of this order, to the court below as well as the learned advocate(s) for the opposite parties in the court below at the earliest available opportunity, in order to ensure due compliance.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the petitioner upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)