

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Civil Revisional Jurisdiction**

**CO 28 of 2020
IA No. CAN 1 of 2021**

**Anil Saha
-versus-
Golapi Dey Sarkar**

Mr. Anurag Sharma
Ms. Nikita Agarwal
... for the petitioner.

In Re: CAN No. 1 of 2021

By an order dated 02.12.2021 this Court has dismissed CO No. 28 of 2020 for default. The petitioner has filed the present application being CAN No.1 of 2021 for restoration of CO No. 28 of 2020.

This Court finds that sufficient cause has been shown for non-appearance of the petitioner on the date fixed.

Accordingly, CAN No. 1 of 2021 is allowed and CO No. 28 of 2020 is restored to its original fine and number.

In Re : CO No. 28 of 2020

The petitioner has filed the present revisional application being aggrieved and dissatisfied with the order No. 39 dated 1st November, 2019 passed by the learned Civil Judge (Junior Division), 2nd Court, Jalpaiguri in Title Suit No 132 of 2015 wherein the Trial Judge has rejected the application filed by the defendant for amendment in the written statement.

The plaintiff/opposite party has filed the suit against the petitioner/defendant for eviction, recovery of possession on the ground of non-payment of monthly rent and arrears of rent. During the pendency of the suit, the defendant has filed an application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure praying for amendment in the written statement and the proposed amendment reads as follows :-

“After Para 26 of the Written Objection a new Para as 26A needs to be added and in the said Paragraph the following needs to be inserted –

“That on 29.03.2019 at about 11 a.m. when the Defendant was sitting in his shop in the expectation customers, the Plaintiff came to the shop of the Defendant along with one person namely Manik who introduced himself as the driver of one Tamal Ghosh @ Tom, a political leader and asked the Defendant why he did not attend the Court on the earlier day and threatened the Defendant with dire consequences if the Defendant fails to attend the Court on the next day. When the Defendant said that he was ill owing to his motor cycle accident, they threatened the Defendant that on the next occasion the Defendant would not survive from any such accident.

The Defendant rushed to the Police Station to inform the matter but in spite of receiving both the copies of the complaint did not return the copy with proper acknowledgement of receipt nor took action for the reason best known to them and advised the Defendant to agitate the entire matter in the civil court”.

Learned Civil Judge (Junior Division), 2nd Court, Jalpaiguri has rejected the application on the ground that the learned Judge has not found any typographical mistake or any co-incident with respect of the suit.

Counsel for the petitioner submits that the amendment as sought for by the petitioner is in connection with the suit pending between the parties before the learned trial Judge and the said averment is very much necessary for adjudication of the suit.

Learned counsel for the petitioner has relied upon the judgment reported in ***AIR 2009 Supreme Court 2544*** paragraphs 8, 9 and 10.

Considered the submission made by the counsel for the petitioner.

Perused the amendment application, impugned order and the judgment cited by the petitioner.

The judgment relied by the counsel for the petitioner is distinguishable from the facts of the present case.

The petitioner/defendant intends to bring on record about the incident dated 29th March, 2019 but this Court finds that the said incident is no way connected with the suit and there is no necessity to bring the said fact on record. This Court finds that there is no illegality in the order dated 1st November, 2019 and the same does not require any interference.

Accordingly, CO No. 28 of 2020 is thus dismissed.

(Krishna Rao, J.)