

M/L 10
02.7.2024
Court No.19
SD

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 311 of 2024

Sri Rupendu Sekhar Chandra
Vs.
Smt. Sharmistha Chandra (nee Gupta)

Mr. Subhojit Saha

...for the Petitioner.

Affidavit of service filed on behalf of the petitioner
be kept with the record.

None appears on behalf of the opposite party in
spite of service.

The instant application under Article 227 of the
Constitution of India is at the instance of the plaintiff in a
suit for eviction of licensee which is directed the order
dated March 22, 2023 passed by the 5th Court of learned
Civil Judge (Junior Division) at Alipore, District: 24
Parganas (South) in the said suit being Title Suit No.1574
of 2017.

The learned Trial Judge, by the order impugned,
has allowed the prayer of the defendant, the opposite
party herein to amend the written statement to include the
prayer for declaration of ownership over the suit property
by way of counter-claim.

It appears from the record that such prayer of the
defendant was once refused by the learned Trial Judge
vide order dated January 22, 2019. That apart, the witness
action in the suit has started; at this stage, the prayer of

the defendant for amendment of written statement to include counter-claim clearly offends not only the provision of Order VIII Rule 6A of the Code of Civil Procedure but also the restrictions of the proviso appended to the Order VI Rule 17 thereof.

The order impugned therefore suffers from patent jurisdictional error; as such, is not sustainable, and is accordingly set aside.

CO 311 of 2024 is thus allowed without any order as to costs.

The learned Trial Judge is requested to expedite the disposal of the suit, and in doing so shall not allow the prayer of the parties for any unnecessary adjournment.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

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

(Biswajit Basu, J.)