

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

C.O. 1147 of 2024

Shri Ravi Prasad

Vs.

Shri Bharat Sha

**Mr. Shyamal Kumar Das
Ms. Smita Pal**

... For the Petitioner.

Mr. Nirmalya Ray

... For the O.P. No. 13.

Learned Advocate for the petitioner and learned Advocate for the opposite party (through legal aid) are present.

Heard the learned Advocates for the parties.

This application under Article 227 of the Constitution of India is directed against an order dated 19.1.2024 passed by the learned Civil Judge(Junior Division), 2nd Court, Serampore, Hooghly in T.s. 101 of 2018. Learned judge by an order dated 29.2.2024 was pleased to reject the prayer of the petitioner made under Order 6, Rule 17 of the Code of Civil Procedure.

S.D. The facts of the case in brief is that the petitioner/plaintiff filed a suit against the opposite party/defendant for eviction from the tenanted premises on the ground of default and reasonable requirement. When the suit was ready for evidence of P.W. 3 the plaintiff by an application dated 3.8.2023 sought to

incorporate in the plaint some facts by way of amendment. The plaintiff in the prayer for amendment has contended that he being the service in the Indian Army since 28.3.2001 has now reached the verge of retirement which is March, 2025.

It is further contended that the petitioner after his retirement wish to settle at the address mentioned in the plaintiff's cause title of the suit property and also intend to look after the business of his wife. By order dated 29.2.2024, learned Trial Court passed an order of rejection by observing and directing as follows:-

“After perusing the petition and other materials available with the record, it is found that the petitioner has prayed for the amendment and incorporation of a fact that he has been serving the Indian Army since 28.3.2001 and going to be retire in March, 2025. The plaintiff further submitted that the abovementioned amendment is formal in nature and it is a subsequent event and the defendant will not prejudice in any manner.

On the other hand the Ld. Advocate for the defendant raises strong objection. After perusing the petition, hearing the submission of both the sides and documents available with the records, this Court is of the view that the present petition is a premature one. The provision of (2) of Sec. 9 of the WBPT Act clearly mentioned that ‘where the landlord is a released or retired person from the Army, Navy or Air-force or will retire within a period or less than a year as a member of the Army, Navy or Air-force and the premises let out by him are required for his own occupation or where the landlord is the parent or wife of a member of Army or Navy or Air-force who dies while in service or within 5 years of retirement and the premises let out by such member are required for the occupation of the family or such member, [the landlord may institute a suit before the Civil Judge] for recovery of immediate possession of such premises.’ So here the petition for incorporation of such fact is to be brought before the court within a year or within a period of less than one year before his retirement. In the present case in hand, the instant petition has been filed by the petitioner before the mandatory period as mentioned in the above-mentioned provision. Hence, the instant petition stands rejected.”

The petitioner being aggrieved by the order passed by the learned Trial Court has come up with an application under Article 227 of the Constitution of India.

Heard learned Advocate for the petitioner and learned Advocate for the opposite party. Perused the petition filed. The learned Advocate for the petitioner

draws attention to the petition of amendment and the order passed by the learned Trial Court and submits that his client will retire on March, 2025 and thus this amendment should be taken into consideration for effective adjudication of the suit.

Learned Advocate for the opposite party objects the prayer of the petitioner and submits that the application for amendment is a premature one and was not maintainable when filed.

Upon perusing the petition and upon hearing the learned Advocates, this court is of the view that as the court has the power to permit amendment of plaint or written statement if such amendment is formal in nature and will not change the nature of the suit and upon perusing the prayer for amendment it is clear that this amendment is formal in nature and will not change the nature of the suit, the prayer for amendment should be allowed.

Although the plea is raised that this petition was premature when it was made and thus it should not be allowed but it is a well settled principle that while considering the petition for amendment merits of the case need not be gone into and merely provisions laid down under Order 6, Rule 17 of the Code of Civil Procedure is to be considered.

Although, the learned Advocate for the petitioner

has submitted that at present his client is entitled to be benefit of Section 9, Sub-section (2) but at this stage the court should not make any observation with such merits of the case and this court leaves the same to be decided by the Trial Court.

In the facts and circumstances of this case, this application under Article 227 is allowed.

The order dated 29.2.2024 passed by the learned Civil Judge, Junior Division (2nd Court), Serampore, Hooghly in T.S. 101 of 2018 is set aside.

The petitioner is directed to file the amended plaint within a period of two weeks from the date of this order.

It is however, made clear that this court has not gone into the merits of the case and all points are left open to be decided at the time of trial.

(Biswaroop Chowdhury, J.)

