

*In The High Court At Calcutta
Civil Revisional Jurisdiction
(Appellate Side)*

C.O. No. 2109 of 2024
Kalpana Mondal
Vs.
Smt. Nupur Roy & Ors.

Mr. Tanmoy Mukherjee,
Mr. Pronobendra Nath Moitra,
Mr. Soumava Santra,
Mr. Tapas Chatterjee ... For the petitioner.

The instant application under Article 227 of the Constitution of India in the instance of the defendant in a suit for eviction and is directed against the Order No. 47 dated February 08, 2024 passed by the learned Judge, Bench – II, Presidency Small Causes Court at Calcutta, in the said suit being Ejectment Suit No. 371 of 2018.

The learned Trial Judge by the order impugned has allowed two applications under Order VI Rule 17 of the Code of Civil Procedure filed by the plaintiffs, the opposite parties herein praying amendment of the plaint.

Mr. Mukherjee, learned advocate for the petitioner submits that the trial of the suit has commenced, the learned Trial Judge has allowed the said applications for amendment without considering the restrictions contemplated under the proviso appended to the Order VI Rule 17 of the Code. He further submits that the plaintiffs, by the proposed amendment have sought to add two new grounds of eviction enshrined under Section 6 of the West Bengal Premises Tenancy Act, 1997 though the suit, as it has been framed, does not appear to be a suit under the said provision of the said Act of 1997.

Heard Mr. Mukherjee, perused the materials-on-record.

The plaintiffs, by the first application for amendment, have sought to include the ground of reasonable requirement as contemplated under Section 6(1)(d) of the said Act of 1997 and by the second application for amendment, have sought to include the fact that the defendant and her husband have acquired a three-storied building at a two-minute walking distance from the suit premises, as contemplated under Section 6(1)(j) of the said Act of 1997.

The West Bengal Premises Tenancy Act, 1997 is the relevant rent control legislation which determines the incidence of the tenancy of the petitioner, as such lack of pleadings to identify the said suit as one under Section 6 thereof is no ground to deny the prayer of the plaintiffs to add new grounds of eviction in the suit.

The restriction to allow the amendment of pleadings after commencement of the trial should not be applied mechanically, *it depends upon the stage of the trial vis-à-vis the nature of the suit*. The reasonable requirement of the plaintiffs for the suit property is their subjective satisfaction which may occur or be felt after the commencement of trial. The application for amendment though is not explicit on this point but since the suit has only reached to the stage of recording of the evidence-in-chief of P.W.₁, denial to the plaintiffs to have an opportunity to prove the said ground would not be just and proper.

The plaintiffs in the year 2019, had obtained the certified copy of the relevant deed of purchase of a property near to the suit property by the petitioner and her husband

and though they were late in approaching the learned Trial Judge to incorporate the said fact in the plaint but in view of the stage of the trial as indicated above, this Court is not inclined to interfere with the order impugned on this ground as well, particularly when the learned Trial Judge has felt that the amendments sought for are required for proper adjudication of the suit.

The order impugned, therefore, do not call for any interference, C.O. 2109 of 2024 is dismissed without any order as to costs.

Time to file additional written statement by the defendant, however is extended for a further period of two weeks from date.

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

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

(Biswajit Basu, J.)