

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

C.O. 2337 of 2024

Sarmila Chandra & Anr.

Vs.

Rajesh Kumar Rajak

Mr. Probal Kr. Mukherjee, Sr. Adv.,
Mrs. Sanjukta Ray,
Mr. Partha Sarathi Adhikary ... For the petitioners.

Ms. Mou Ghosh Sen,
Mr. Srinjoy Das ... For the opposite party.

The plaintiffs, in a suit for eviction, are the petitioners of the instant application under Article 227 of the Constitution of India, which is directed against the order dated April 25, 2024 passed by the Learned Judge, Bench – II, Presidency Small Causes Court at Calcutta, in the said suit being Ejectment Suit No. 73 of 2010.

The learned Trial Judge, by the order impugned, has dismissed an application for amendment of plaint on the ground of delay in seeking such amendment.

Mr. Mukherjee, learned senior advocate for the petitioners submits that by the proposed amendment, the plaintiffs sought to incorporate the factum of death of the original tenant, the predecessor-in-interest of the defendant, to take the suit out of the provisions of the West Bengal Premises Tenancy Act, 1997, as by the operation of Section 2(g) thereof, the defendant is no longer a tenant, but for which, the plaintiffs had to wait for a period of five years from the date of death of the said tenant, therefore, the dismissal of the application for amendment on the ground of delay is not justified.

Mr. Srinjoy Das, learned advocate for the opposite party submits that on the death of the original tenant, the plaintiffs have substituted his client in the suit, treating him as a tenant, as

such, now they cannot urge that the defendant is no longer a tenant.

Heard the learned advocate for the parties; perused the materials on record.

The plaintiffs, immediately on the death of the tenant, is not entitled to avail the benefit of section 2(g) of the said Act of 1997 till the statutory gestation period of *five years* expires, therefore, delay in approaching the learned Trial Judge, praying suitable amendment in their pleadings to get the benefit of the said provision of the said Act of 1997 cannot be denied on the ground of delay.

Whether the plaintiffs would succeed on the ground sought to be incorporated by the proposed amendment would be decided in the suit, as such, the defendant is free to take any plea befitting to his defence.

The order impugned is therefore, not sustainable, and is accordingly set aside.

The plaintiffs are directed to file the amended plaint **within a period of 14 days from date**. The defendant is at liberty to file additional written statement **within 14 days from the date of service of copy of the amended plaint** upon him.

C.O. 2337 of 2024 is thus disposed of with the above observation without any order as to costs.

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

(Biswajit Basu, J.)