

S/L 6
12.9.2024
Court No.19
SD

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 3178 of 2024

Soumitra Kayal @ Sukhendu Kayal
Vs.
Ananya Gayen & Ors.

Mr. Tapas Kumar Majumdar
Mr. Partha Pratim Bhattacharjee

...for the Petitioner.

Mr. Goutam Das
Ms. Varsha Roy

...for the Opposite Parties.

The pre-emptor in a proceeding under Sections 8 and 9 of the West Bengal Land Reforms Act, 1955 being *Misc. Case No. 23 of 2022* pending before the 1st Court of learned Civil Judge (Junior Division) at Diamond Harbour, District: 24 Parganas (South) is the petitioner of the instant application under Article 227 of the Constitution of India.

The pre-emptees, the opposite parties herein had applied for amendment of their written objection to the application for pre-emption.

The learned Trial Judge by the order impugned being Order No.33 dated August 03, 2024 has allowed the said application with costs of Rs.1,000/-.

Mr. Tapas Kumar Majumdar, learned advocate for the petitioner submits that the cross-examination of the pre-emptor is over; at this stage, the learned Trial Judge should not have allowed the application for amendment.

Mr. Goutam Das, learned advocate for the opposite parties on the other hand submits that the proposed amendment is very formal in nature and is necessary for the effective adjudication of the proceeding. He places reliance on an unreported judgment of a coordinate Bench of this Court passed on May 16, 2024 in *CO 698 of 2023* to contend that the amendment should be liberally allowed.

Heard learned advocate(s) for the parties, perused the materials on record.

The trial of the suit admittedly has not only commenced, but it has progressed to the stage of cross-examination of the pre-emptor. The application for amendment lacks any explanation as to why such amendment could not be made before the commencement of trial, therefore the restriction imposed under the proviso appended to Order VI Rule 17 of the Code of Civil Procedure to allow an application for amendment after commencement of trial squarely applies in the instant case.

The unreported judgment relied on by Mr. Das is distinguishable in the facts of the present case, inasmuch as in the said decision, the general principle as to how an application for amendment of pleadings needs to be dealt with, has been laid down. The said decision is not a pointer to the issue under consideration in the present revisional application.

The order impugned for the aforesaid reason(s) is not sustainable and is accordingly set aside.

The learned Trial Judge is requested to expedite the disposal of the Misc. Case.

CO 3178 of 2024 is allowed with the above observation without any order as to costs.

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

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

(Biswajit Basu, J.)