

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 27 of 2024

Sanil Chandran

VERSUS

Suroth Ghosh Mazumder & Anr.

For the petitioner:

Mr. Sounak Bhattacharya, Adv.

Mr. Sounak Mandal, Adv.

Mr. Abhirup Haldar, Adv.

For the Opposite Party No. 1:

Mr. Anirban Saha Ray, Adv.

Mr. Manik Lal Poddar, Adv.

Last Heard on: March 24, 2025

Judgment on: May 08, 2025

Biswaroop Chowdhury,J:

The petitioner before this Court is a defendant in a suit for eviction and is aggrieved by the order dated 06.10.2023 passed by learned Civil Judge (Junior Division), 2nd Court, Alipore, South 24-parganas in rejecting the petition of the petitioner under Order VIII Rule 9 of the Code of Civil Procedure.

The case of the petitioner in the application under Order VIII Rule 9 of the Code of Civil Procedure may be summed up thus:

1. The defendant after coming to know of the fact that the plaintiff filed this suit against Nalini Ramachandran the mother of the petitioner/defendant no. 1 for her eviction from the suit property and the said suit was fixed for *ex parte* hearing against this petitioner after demise of the said Nalini Ramachandran the defendant/petitioner filed application for setting aside the order of *ex parte* hearing.
2. After hearing both sides learned Court was pleased to vacate the order of *ex parte* hearing and allowed the defendant/petitioner, to contest the suit.
3. After demise of Nalini Ramachandran the petitioner became the *bona fide* tenant in respect of the suit property by operation of law.
4. That since the demise of said Nalini Ramachandran there have been certain change of circumstances which are required to be put forward in the pleading of the defendant and the written statement filed earlier by the contesting defendant since deceased is required to be amended by incorporating such fact.
5. The petitioner/defendant has already filed herewith the additional written statement by incorporating such facts. The said additional written statement will not change the nature and character of the pleading of the original defendant in the suit.
6. The plaintiff will not be prejudiced if the additional written statement filed by the defendant/petitioner is accepted.

The application was contested by the plaintiff/opposite party by filing written objection. It was contended by the plaintiff/opposite party that the defendants became tenants in the suit property for a period not exceeding five years from the date of death of the Nalini Ramachandran. It is denied by the opposite party/plaintiff that since the demise of Nalini Ramachandran there has been certain change of circumstances. It is also contended that the substituted defendant steps into the shoes of the original defendant and therefore, has no right to file fresh written statement, and the additional written statement will change the nature and character of the original written statement. In the affidavit in reply the petitioner contended that the tenancy of his mother was given by the predecessor in interest of the plaintiff for residential cum-commercial purposes for which the predecessor in interest of this defendant and thereafter on her demise this petitioner/defendant is also carrying their family business are uninterruptedly since inception of their tenancy till date and therefore the fact as stated in the additional written statement should be incorporated for the purpose of proper adjudication and fair disposal of the suit.

The learned Trial Court upon hearing the learned Advocates was pleased to dispose the application under Order VIII Rule 9 CPC by observing as follows:

“The case record is taken up for passing order regarding the petitioner U/O 8 R 9.

Heard the Ld. Advocates of both sides on previous occasions.

Considered.

The Ld. Advocate for the petitioners/defendants submitted that they have filed one additional W.S. and prayed for its acceptance on the ground mentioned in the petition. It is stated in the petition that after the death of Nalini Ramachandran there have been certain change of circumstances required to be brought in the pleadings of the defendant. Moreover, the OP has only given general objection and no specific denial is made in their W.O. hence, the petition be allowed. Considered.

On the other hand, the Ld. Advocate for the OP/plaintiff submitted that the predecessors of the defendants was the original tenant and W.S. is filed by her. Current defendants are substituted defendants and they step into the shoes of the original defendant. So no fresh W.S.; or additional W.S. can be filed by them. Here, the defendants are trying to file fresh W.S. in form of additional W.S. which is barred by law. Hence, the petition be rejected. Considered.

After reviewing the case record, petition, W.O., and the additional W.S. it becomes evident that the filed W.S. contains facts related to the suit along with fresh denials of all allegations and contentions made in the plaint. It appears that the defendants are attempting to submit a new written statement, alleging that the summons were not served upon them. Subsequently, upon receiving the amended plaint, they filed this additional written statement, intending for it to be considered as part of the written statement.

Upon further scrutiny, it is revealed that there is no order regarding the amendment of the plaint and the filing of an amended copy of the plaint. Consequently, there is no basis for granting an additional W/s. Additionally, considering that the defendants have been substituted in place of the original defendant and have stepped into her shoes, they lack the right to file a separate or additional W/S. as a result, the petition is liable to be rejected.

Hence, it is

ORDERED

that the petition U/O 8 R 9 is heard, considered and rejected on contest without any order as to the costs.

The additional W/S is rejected.

Fix 20.11.2023 for framing the issues.”

The petitioner being aggrieved by the order dated 06.10.2023 passed by the learned Trial Judge has come up with this application under Article 227 of the Constitution of India.

It is contended by the petitioner that the learned Trial Court in exercise of its jurisdiction acted illegally and with material irregularity by passing the impugned order. It is further contended that the learned Trial Court without appreciating the fact that the petitioner in the additional written statement is only praying for disclosure of additional defence in original written statement rejected the application under Order VIII Rule 9 of the Code of Civil Procedure.

It is also contended that the learned Trial Court failed to appreciate that the petitioner having stepped into the shoes of the original defendant there is no bar in filing additional written statement.

Heard the Learned Advocate for the petitioner and Learned Advocate of the Opposite party no. 1 perused the petition filed and materials on record.

Learned Advocate for the petitioner submits that the learned Trial Judge erred in refusing the prayer to file additional written statement when such additional written statement does not change the nature of defence. Learned Advocate relies upon the following judicial decisions.

- ***Bal Kishan Vs. Om Parkash & Anr.***

Reported in (1986) 4 SCC 155.

- ***Sri Sudeb Mukherjee & Ors. Vs. Manjur Ahmed Khan.***

Reported in 2015 SCC Online Cal 1444.

Learned Advocate for the Opposite party submits that the petitioner is not entitled to file additional written statement to make out a new case.

Before proceeding to decide the matter in issue it is necessary to consider the provisions contained in Order VIII Rule 9 to the Code of Civil Procedure. Order VIII Rule 9 to the Code of Civil Procedure provides as follows:

Rule 9: Subsequent pleadings – No pleadings subsequent to the written statement of a defendant other than by way of defence to set off or counter claim shall be presented except by the leave of the Court and upon such terms

as the Courts thinks fit; but the court may at any time require a written statement or additional written statement from any of the parties and fixed a time of not more than thirty days for presenting the same.

Thus upon plain reading of Order VIII Rule 9 of the Code of Civil Procedure it will appear that without leave of the Court no pleading subsequent to the written statement can be presented without leave of the Court. Thus it is clear that Courts have power to grant leave to file additional written statement if it thinks fit. As no specific conditions are provided to be complied for grant of leave courts have wide discretion to grant leave if the court is of view that the same is necessary in the interest of justice. Moreover, Courts have power at any time to require a written statement or additional written statement.

In the case of ***Bal Kishan (supra)*** the Hon'ble Supreme Court observed as follows:

“3. Order 22 Rule 4 of the Code of Civil Procedure, 1908 provides that where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, in an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit. Since the action in this case related to property, the right to sue did survive and the Rent Controller was right in bringing the legal representative of the deceased Musadi Lal on record. Sub-rule (2) of rule 4 Order XXII authorises any person

who is brought on record as the legal representative of a defendant to make any defence appropriate to his character as legal representative of the deceased defendant. The said sub-rule authorises the legal representative of a deceased defendant or respondent to file an additional written statement or statement of objections raising all pleas which the deceased tenant had or could have raised except those which were personal to the deceased defendant or respondent. In the instant case Bal Kishan, the appellant could not have, therefore, in the capacity of the legal representative of the deceased respondent Musadi Lal who was admittedly a tenant, raised the plea that he was in possession of the building as a trespasser and the petition for eviction was not maintainable. It is true that it is possible for the Court in an appropriate case to implead the heirs of a deceased defendant in their personal capacity also in addition to bringing them on record as legal representatives of the deceased defendant avoiding thereby a separate suit for a decision on the independent title as observed in *Jagdish Chander Chatterjee & Ors. v. Sri Kishan & Anr.*, [1973] 1 S.C.R. 850. The relevant part of that decision at page 854 reads thus:

"Under sub-clause (ii) of Rule 4 of Order 22 Civil Procedure Code any person so made a part as a legal representative of the deceased respondent was entitled to make any defence appropriate to his character as legal representative of the deceased respondent. In other words, the heirs and the legal representatives could urge all contentions which the deceased could have urged except only those which were personal to the deceased. Indeed this does not prevent the legal representatives from setting up also their own independent title, in which case there could be no objection to the court impleading them not merely as the legal representatives of the deceased but also in their personal

capacity avoiding thereby a separate suit for a decision on the independent title."

In the case of ***Sudeb Mukherjee (supra)*** it was observed as follows:

"I have considered the submission made on behalf of the petitioners. Order 22 Rule 2 of the Code of Civil Procedure provides that any person substituted as a legal heir or representative of a deceased defendant may make any defence appropriate to his character as legal representative of the deceased defendant. Thus, this is a statutory right given to the legal representative of a deceased defendant who is brought on record by way of substitution. The learned Trial Judge referred to certain decisions of the Hon'ble Apex Court and other High Courts in his judgment; but I do not think it necessary for me to deal with such decisions. I only make reference to the decision of the Hon'ble Supreme Court in the case reported in AIR 1986 SC 11952 which clearly recognises the right of a legal representative of a deceased defendant, who has been substituted, to file appropriate defence.

Whether or not the additional written statement that the defendant No. 3 (a) has been permitted to file is similar to the additional written statements that the defendant Nos. 1 to 4 were not permitted to file, is a factual issue. Further, the learned Trial Judge records that there is no inconsistency between the written statement filed on behalf of the original defendant No. 3 and the additional written statement that the

defendant No. 3(a) has been permitted to file. Allowing the defendant No. 3(a) to file additional written statement, in my opinion, will not cause any prejudice to the petitioners or will not cause miscarriage of justice. The defendant No. 3(a) will have to prove the statements made in her additional written statement at the trial of the suit.

For the reason aforesaid, I am not inclined to interfere with the judgement and order of the learned Trial Judge. This revisional application fails and is dismissed without any order as to costs.

Since the suit is pending since 2001, it is desirable that the same be disposed of at an early date. The learned Trial Judge is directed to dispose of the suit as soon as possible and positively within a period of six months from the date of communication of this order without granting unnecessary adjournment to the parties.”

Apart from the decisions cited by the Learned Advocate for the petitioner it is necessary to consider the following Judicial decisions:

State of Rajasthan v Mohammed IKBAL and other.

Reported in AIR-1999 Rajasthan – P. 169.

Binda Prasad V United Bank of India Ltd and other

Reported in AIR 1961 Patna – P152

Sri Srinivas Murthy Mandiram VS Mrs Gnana SOUNDARI

Reported in AIR-2004 Madras P-518.

In the State of Rajasthan and Anr (supra) the Hon'ble Court observed as follows:

'M/s. Ganon Dunkerley and Co. Ltd. v Steel Authority of India Ltd. (supra) was the case where the Orissa High Court observed that application under Order 8, Rule 9, CPC cannot be treated as one under Order 6, Rule 17, CPC as both are contextually different. Inconsistent pleas which are at variance with plea originally taken in the suit cannot be permitted to be introduced.

The principles deducible from the above discussions may be summarised thus-

- a) The plaintiff cannot be allowed to introduce new pleas by way of filing rejoinder, so as to alter the basis of his plaint.
- b) In rejoinder, the plaintiff can be permitted to explain the additional facts which have been incorporated in the written statement.
- c) The plaintiff cannot be allowed to come forward with an entirely new case in his rejoinder.
- d) The plaintiff cannot be permitted to raise inconsistent pleas so as to alter his original cause of action.
- e) Application under Order 8, Rule 9, CPC cannot be treated as one under Order 6, Rule 17, CPC as both are contextually different.

In the case on hand, the bare look at the pleas sought to be introduced by the plaintiffs should not be at variance with the pleas originally taken in the

plaint. No doubt that the plaintiffs were permitted by the Learned appellate Court to file rejoinder but by this permission, the scope of Order 8, Rule 9, CPC cannot be extended. The impugned order though expressly mentioned that only those facts will be considered as are necessary for determination of the additional issue but this is not sufficient. The Learned Court below ought to have specifically considered whether the pleas sought to be introduced by way of rejoinder is not inconsistent and at variance with the pleas originally taken in the plaint and whether new pleas which could only be introduced by way of amendment were raised in the rejoinder. In not doing so, the Learned Court below has committed jurisdictional error and if the order is allowed to stand, it would occasion failure of justice.'

In the case of Srinivas Meetly Mandiram (supra) the Hon'ble Court observed as follows:

'9. In this context, one should remember, Order VIII Rule 9 which gives ample power to the Court, to grant leave, for filing additional written statement, from any of the parties to the suit and it does not restrict prescribing, what is the defence that has to be taken or something like that. It says,

"No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off or counter claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same."

It does not say that the subsequent pleading viz., additional written statement should be consistent with the original written statement. It also does not say, that the ground of defence, which had arisen, after the institution of the suit alone should be included in the additional written statement. Therefore, generally, if any defence had not been taken in the original written statement, though it was available, that could be taken, by filing an additional written statement, and only to enable the defendant to raise that kind of plea also, Order VIII Rule 9 is intended. Therefore, when a defendant had raised a new plea, which is not covered in the original written statement or an inconsistent plea, against the original written statement, the same cannot be described or labelled as prejudicial defence or vexatious or scandalous, as understood under Order VI Rule 16 C.P.C. If the plaintiff/revision petitioner was aggrieved by the court's order, in granting permission to file the additional written statement, the remedy would have been to challenge the same and not to file a petition under Order VI Rule 16 C.P.C., to strike out the entire defence. Admittedly, in this case, the plaintiff/petitioner had not challenged the order of the trial Court, granting permission, to file additional written statement and in this view, in my considered opinion, Order 6 Rule 16 C.P.C., is not available. Assuming that it could be raised even after the additional written statement is received, then we have to see, under what circumstances, the averments in the written statement could be scraped or struck out or amended.

10. Order 6 Rule 16 C.P.C. reads:

"The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit. Or

(c) which is otherwise an abuse of the process of the Court."

11. The contention of the learned counsel for the plaintiff/petitioner is that the revision petitioner's case comes under Rule 16(a) and (b). In this context, we have to see, whether the defence raised by the defendant is unnecessary, scandalous, frivolous or vexatious.

12. The plaintiff is one "Shri Srinivasamurthy Mandiram" represented by its Executive Trustee Mr. D. Srinivasan. It seems that the plaintiff claims that it is a private trust, not attracting the Rent Control proceedings. Admittedly, the first respondent's husband was permitted to put up a shed for his business. After his death, the first respondent continues to be in possession of the property. Since the suit is filed for eviction, the legal representative of the original lessee, without questioning the status of the plaintiff, claimed protection under City Tenants Protection Act, as seen from the original statement, thereby conceding the title of the plaintiff. But, in the additional written statement, as pointed out by the learned counsel for the petitioner, some new defence was taken, as if the plaintiff trust is a public trust and that

the suit for eviction is not at all maintainable, since the tenant is entitled to the protection of Tamil Nadu Buildings (Lease and Rent Control) Act, 1860.

13. True, as rightly submitted by the learned counsel for the plaintiff/revision petitioner, this defence is just inconsistent with the original defence. It is an admitted position that the defendant could take inconsistent plea and which plea he relies on or on which defence, he could succeed, are all materials to be decided at the time of the trial. Therefore, considering the inconsistent stand taken by the defendant alone, the additional written statement cannot be described as unnecessary, scandalous, frivolous or vexatious. Even if a case is decided previously against the first defendant or her husband, whether that would operate as res judicata or something like, has to be decided, if raised and on the basis of the previous decision, summarily a defendant cannot be prevented from raising the said plea. If there is any allegation, deviating from the subject matter of the suit, extraneously aiming against the individual, not connected with the subject matter for decision, in my opinion, then only it could be said, the pleadings are unnecessary or scandalous, frivolous vexatious, attracting Rule 16(a). In this case, as seen from the additional written statement, the respondent herein had questioned the status of the plaintiff, locus standi to maintain the suit for eviction, etc. and these matters have to be decided only at the time of the trial and the same cannot be struck out.'

In the case of Binda Prasad (supra) the Hon'ble Court observed as follows:

‘24. The crucial question, however, is : Should a written statement, filed after the settlement of the issues, as here, be, as a rule rejected?

25. The answer must be in the negative. Every case must depend on its individual facts. Whether such a written statement should be accepted or not, in a particular case, will as such, depend on the facts of that case on the basis of which the Court will exercise its own judicial discretion. No cut and dry formula, of universal application, can, possibly, be laid down for the guidance of the Court.

27. Rule 9, Order 8, lays down, inter alia, that no pleading subsequent to the written statement of a defendant, other than by way of defence to a set-off, shall be presented except by the leave of the court and upon such terms as the court thinks fit. Under this rule either party may, with leave of the court, file a supplementary statement. No supplemental written statement, however, can be filed after plaintiff's case is closed. Rule 9, therefore, invests the court with the widest possible discretion and enables it to accept a written statement filed subsequently after the settlement of the issues upon such terms as the court thinks fit. Rule 7, O. 9, further provides that if at ‘an adjourned hearing’, where the court has, for non-appearance of a defendant, adjourned the hearing of the suit ex parte against him, the defendant appears and assigns good cause for his ‘previous non-appearance’ he can be heard in answer to the suit, as if he

had appeared on the day fixed for his appearance, 'upon such terms as the Court directs as to costs or otherwise'. This cannot be read to mean that he cannot be allowed to appear at all if he does not show good cause. All that it means is that he cannot be relegated to the position he would have occupied if he had appeared.

Thus upon considering the provision contained in Order 8 Rule 9 of the Code of Civil Procedure and the judicial decisions it is clear that courts have discretion to permit filing of additional written statement by either of the parties. Moreover under sub-clause (ii) of Rule 4 of Order 22 of the Code of Civil Procedure the heirs and legal representatives could raise all contentions which the deceased could have urged except only those which were personal to the deceased.

It is to be remembered that right to defend is a basic right of all persons. A person has right to defend any action brought against him in any Court of Law whether Civil or Criminal or before any administrative authority. Thus all reasonable opportunity should be given to a person to defend his case which is available to him under Law, at initial stage of the proceeding or at the subsequent stage unless the conduct of the party shows male-fide intention.

In the instant case the petitioner being the substituted defendant did not dispute the maintainability of the plaintiff's suit under West Bengal Premises Tenancy Act 1997. The suit for eviction was filed by the plaintiff on the grounds of reasonable requirement thus in the event it can be proved by defendant that

the plaintiff has reasonable accommodation the suit will fail. A tenant under West Bengal Premises Tenancy Act has the right to take the defences available to him under law even if it was not taken by the predecessor or by him at the outset as West Bengal Premises Tenancy Act 1997 is a welfare legislation. From the Additional Written Statement it appears that the petitioner/defendant sought to take the main plea that Land-Lord has sufficient accommodation, hence suit property is not required. This plea is not unjustified or contrary to Rules. Thus prayer for submitting additional Written Statement ought to have been allowed, subject to payment of costs.

Hence this revisional application stands allowed. Order dated 06-10-2023 passed by Learned Civil Judge (Junior Division) 2nd Court at Alipore District – 24 Parganas (South) in Ejectment Suit No. 61 of 2013 is set aside. The additional written statement filed by the petitioner/Defendant Sunil Chandran be accepted subject to payment of costs of Rs. 3,000/- (Rupees there thousand).

Learned Trial Court is requested to dispose the suit expeditiously.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)

