

Court No. 6
(265719)

20.02.2025
(AD 1)
(S. Banerjee)

CO 571 of 2025

Pradipta Chakraborty
Vs.
Sanjib Sabui & Ors.

Mr. Tarak Nath Halder

...for the petitioner

Mr. Sanat Kumar Biswas

...for the opposite party

1. This application under Article 227 of the Constitution of India is at the instance of the defendant no. 1 in suit for eviction and is directed against orders dated January 17, 2023 and February 10, 2025, both passed by the learned Civil Judge (Jr. Division), First Court at Sealdah, South 24 Parganas in Ejectment Suit No. 74 of 2008. By the order dated January 17, 2023, the application under Order 6 Rule 17 of the Code of Civil Procedure filed by the petitioner, stood rejected. By the order dated February 10, 2025 the petition filed by the petitioner under Section 151 of the Code praying for giving an opportunity to the petitioner to file additional written statement, stood rejected.

2. Mr. Halder, learned advocate appearing for the petitioner submits that after the learned trial Judge allowed the application for amendment of plaint by order dated March 4, 2021, the defendants were given liberty to file additional written statement. He submits that the plaintiffs/opposite parties neither filed the amended plaint before the learned trial Judge, nor served the copy of the same upon the learned advocate for the defendants. He further submits that for the purpose of bringing on record certain subsequent events, the petitioner filed an application under Order 6 rule 17 of the Code praying for amendment of written statement which stood rejected by the impugned order without considering the fact that the proposed amendments are necessary for the purpose of deciding the real controversies between the parties in the suit. He further submits that Order 8 rule 9 of the Code of Civil Procedure gives a party an opportunity to file a subsequent pleading and for such purpose the petitioner sought for leave from the learned trial Judge which was rejected mechanically and by a totally non-speaking order.
3. Per contra, learned advocate appearing for the plaintiffs/opposite parties submits by producing

the information slip dated February 19, 2025 that the amended complaint was filed on March 10, 2021 pursuant to the order allowing the amendment of the complaint and a copy of the amended complaint was also served upon the defendant.

4. The information slip dated February 19, 2025, filed by the learned advocate for the opposite parties, is taken on record.
5. Learned advocate appearing for the plaintiffs/opposite parties further submits that the defendants are trying to delay the hearing of the eviction suit which is fixed for arguments today.
6. Heard the learned advocates for the respective parties and perused the materials placed.
7. It is evident from the record that the application for amendment of the written statement was filed after the commencement of trial.
8. Order 6 rule 17 of the Code of Civil Procedure states that no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

9. The petitioner sought to incorporate the fact that after the demise of the father of the defendant, the defendant and his mother were the joint tenants of the suit property and thereafter, after the demise of the mother of the defendant, the defendant is the sole tenant of the suit property. The mother of the tenant died long before and the reasons for filing the application for amendment of the written statement long after the death of mother, has not been explained in the application under Order 6 rule 17 of the Code.

10. In view thereof, this Court is of the considered view that the learned trial Judge was right in holding that the defendant has failed to establish that despite due diligence, he could not have brought the amendment earlier.

11. Mr. Halder, learned advocate appearing for the petitioner places reliance upon a decision of the Hon'ble Supreme Court in the case of ***Surender Kumar Sharma -Vs.- Makhan Singh***, reported in **(2009) 10 SCC 626** in support of his contention that even if the application for amendment has been filed at a belated stage, it is the duty of the Court to consider whether the proposed amendments are

necessary for the purpose of deciding the real controversies between the parties in the suit.

12. It does not appear from the said reported decision as to whether the suit was filed prior to the incorporation of the proviso to Order 6 rule 17 of the Code or after the amendment of the Code thereby incorporating the proviso thereto. The proviso to Order 6 rule 17 of the Code did not fall for consideration in the case of *Surender Kumar Sharma (Supra)*.

13. In view thereof, this Court is of the considered view that the said decision cannot come to the aid of the petitioner.

14. That apart, in paragraph 3 of the plaint it was specifically stated that until termination of the tenancy of the opposite parties, the opposite parties were the joint tenants in respect of the suit property. In the original written statement there was only a vague denial of the same by the defendant. This Court finds that by way of the proposed amendment the petitioner is trying to take a new line of defence which is not permissible.

15. For all such reasons, this Court is not inclined to interfere with the order rejecting the application for amendment of written statement.

16. Insofar as the rejection of the leave sought for by the petitioner for filing additional written statement is concerned, it would be relevant to take note of the provisions laid down under Order 8 Rule 9 of the Code of Civil Procedure. The first limb of Order 8 Rule 9 of the Code vests a right upon a party to file a pleading subsequent to the written statement but, the leave of the Court has to be obtained for such purpose. The second limb of Order 8 rule 9 of the Code empowers the Court at any time to require a written statement or additional written statement from any of the parties and fix a time of not more than 30 days for presenting the same.

17. The case on hand do not fall within the second limb of Order 8 rule 9 of the Code. The petitioner herein sought to invoke the first limb of Order 8 rule 9 of the Code. Therefore, the application for leave ought to have been accompanied by the subsequent pleading which the party sought to file subsequent to the filing of the written statement.

18. Mr. Halder, in his usual fairness, submits that such pleading was not filed and only the application for leave was filed before the learned trial Judge.

19. Be that as it may, the leave of the Court as contemplated in Order 8 rule 9 of the Code, cannot be granted mechanically and the learned Judge after considering the grounds on which the party sought for leave of the Court has to pass a reasoned one either allowing or refusing to grant leave. After going through the application under Section 151 of the Code filed by the petitioner herein seeking opportunity to file the additional written statement it appears that it has only been stated therein that if the defendants do not get a chance to file the additional written statement, they will be highly prejudiced. The same cannot be a ground to allow a party to file a pleading subsequent to the filing of the written statement. The learned trial Judge, in the considered view of this Court, was right in rejecting the application praying for leave to file additional written statement.

20. For all the reasons as aforesaid, this Court is not inclined to interfere with the orders impugned in the present revisional application.

21. Accordingly, CO 571 of 2025 stands dismissed without, however, any order as to costs.

22. The learned trial Judge is requested to dispose of the suit as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

(Hiranmay Bhattacharyya, J.)