

IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

THE HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

C.O. 853 OF 2025

WITH

SONALI BISWAS AND ORS

Versus

SUJOY KUMAR DEY

For the petitioners : Mr. Probal Mukherjee, Ld. Sr. Adv.
Mr. Pranit Bag, Adv.
Mr. Dwip Raj Basu, Adv.

For the Opposite Party : Mr. Debmalya Ghoshal, Adv.
Ms. Amrita De, Adv.

Last Heard on : 16.05.2025

Judgement on : 22.05.2025

CHAITALI CHATTERJEE DAS,J:-

1. This revisional application is directed against an Order dated 26 September 2024, passed by the learned Civil Judge, Senior Division at Sealdah in Title suit No.37 of 2013, allowing the prayer of the defendant to amend his written statement as per schedule mentioned in the application filed under Order 6 Rule 17 of the Code of Civil Procedure.
2. The case of the petitioners who are the substituted legal heirs of the plaintiff Sandipan Biswas are as follows:-

a) A suit for specific performance was filed by the predecessor of the petitioners against the defendant/ opposite party in the year 2013, praying for specific performance of the agreement by and between the plaintiff and the defendant for sale of the premises as described in the schedule of the plaint, which was executed on 17 August 2004, duly notarised on 20 August 2004.

b) The defendant filed the written statement denying that the plaintiff that at any point of time showed the readiness or willingness to complete the necessary formalities or to make payment as alleged at all. Vide such agreement, the proposal made by the purchaser was accepted by the vendor, and agreed to sell the schedule property for a total consideration of ₹30,00,000/- and out of that, Rs.1,00,000/- was paid by way of advance of such total consideration. The balance sum of 29,00,000/- was agreed to be paid by the purchaser on or before the execution and registration of the deed of conveyance.

c) However, the said agreement was not executed resulted filing of a suit before the Hon'ble High Court at Calcutta being CS no. 192 of 2005 by the predecessor of the plaintiffs/ petitioners claiming a decree for specific performance of such agreement for sale dated August 17, 2004. An application under Order 7 Rule 11 of the Code of Civil Procedure was filed by the defendant opposite party on the ground of lack of territorial jurisdiction. After few years the said suit was dismissed by the Hon'ble High Court, directing the plaint to be taken off with liberty to institute the suit on the self, same cause of action before the competent court. Accordingly filed

the present suit being Title suit number 37 of 2013 before the learned court of Senior Division at Sealdah .It is the further case of the petitioner that in course of hearing vide an order dated 27 November 2014, the learned court directed to “impound the agreement for sale and sent before the Collector, 24 Parganas South to determine the market value and asses the stamp duty in respect of the said agreement.

d) The petitioner had to move the Hon’ble court also for expeditious disposal of the matter of impounding/assessment as was pending before the collector and ultimately pursuant to a direction given by the additional chief secretary, finance department, government of West Bengal on 14th December, 2022 assessed the stamp duty of the suit premises at ₹47, 84, 777/-. The petitioner thereafter made payment of the stamp duty on 23 May 2023.

3. It is contended by the learned senior advocate Mr.Prabal Mukherjee that the opposite party despite being aware of the above position and despite having full knowledge of the order passed by the District Collector belatedly filed the application for amendment of the written statement with an oblique intent. It is argued that the application for amending the written statement filed by the Opposite Party is not only mala fide but also filed to derail and delay the hearing of the present suit. By virtue of such amendment, the opposite parties contended that the value of the suit property is enhanced from a sum of ₹30 lakhs to ₹9, 00, 00,000.

4. The learned court after hearing the parties passed an order dated September 26, 2024 allowed to amend the written statement, with a liberty to the

petitioner/Plaintiff to file subsequent pleading/rejoinder regarding the amendment.

5. It is strenuously argued by the learned senior advocate that once the agreement was entered into and was signed and accepted by both the parties, the plaintiff cannot take the advantage of passage of time in execution of such deed of conveyance and or claim the enhanced rate of market value in respect of the same property. It is also argued that the agreement was duly signed by both the parties and was a concluded contract. The suit has been filed for specific performance of contract in respect of such agreement where the date of execution of the agreement for sale is relevant for determining the market value of the suit premises. The learned trial court at the time of deciding the issue of specific performance of sale can only direct the opposite party to accept the consideration recorded in the agreement for sale dated August 17, 2004 and cannot rewrite the terms of the contract/agreement for sale.

6. Argument advanced on behalf of the learned senior advocate of the petitioner that the learned Trial Court recorded that the suit trial has already been commenced but failed to assign any reason as to why the prayer for amendment of the written statement will be allowed when the proviso to the said provision under Order 6 Rule, 17 CPC clearly and unequivocally mandated about the satisfaction of the court regarding allowing such prayer after the trial has commenced. The petition filed under Order 6 Rule 17 is also silent about any reason or sufficient cause on account of which the amendment could not be taken out before the commencement of the trial. No details of the subsequent development can

be found from the four corners of the petition filed for amendment of the written statement. It is argued that the opposite party did not file any counter claim or any alternate prayer for allowing the compensation at any higher rate, which, under the purview of law, they are entitled.

7. The learned advocate appearing on behalf of the opposite party/defendant on the other hand strongly contended that amendment of written statement can be allowed at any point of time if it is found necessary for the proper adjudication. In this case the unregistered Notarised agreement was executed on August 20,2004 and in clause 'H' of such agreement the vendor expressed his urgency to sell the property at the price of 30,00,000/- and both the parties agreed for certain terms and conditions which were to be fulfilled by the parties. As an earnest money out of said 30, 00,000/-Rs. 1 lac was paid as advance .It is submitted that the plaintiff/petitioner filed the suit in the year 2005 before the Hon'ble High Court intentionally to cause delay and to make the property encumbered. This opposite party entered appearance in the suit and raise the point of jurisdiction and non-maintainability of the suit by filing by filing an application under order 41 Rule 11 of the Code of Civil Procedure. The petitioner obtained an ex-parte order of amendment of the plaint by suppressing the filing of Order 7 Rule 11 of CPC by the defendant. However the said suit was dismissed by the Hon'ble court granting liberty to the plaintiff/petitioner to file the same before the appropriate court. It is the case of the petition that in terms of the agreement after completion of Mutation in the month of January 2005, it was duly communicated to the petitioner /plaintiff on 27th January 2005 but the plaintiff failed to fulfil the stipulated condition and also failed to

show readiness and willingness to complete the conveyance. According to the defendant/opposite party/vendor the agreement was rightly cancelled since the petitioner did not show the readiness and willingness within time as stipulated in the agreement and specially when the vendor was in urgent need of such amount.

8. The learned advocate strenuously argued that the filing of suit by the plaintiff petitioner in the year 2005 on the strength of an unregistered notarised agreement and keeping it pending in the wrong forum till 2013 and not to take effective steps including amendments of plaint etc. are nothing but a very calculative and sinister move to make the property encumbered for a prolong period of time. It is argued that the delay was not at the instance of the opposite party but because of this delay the vendor/opposite party is the worst sufferer. By virtue of filing amendment application the opposite party only wanted to incorporate the events that took place during pendency of the suit and to bring it in the pleading and the enhanced valuation assessed by the competent authority vide the direction of the Hon'ble High Court. According it was mentioned in the petition that some development took place which is to be incorporated. It is further submitted that the order to impound the document and the final assessment came to the knowledge of the opposite party only after 20.6.23 when the learned court recorded that such report is received and the plaintiff files the receipt showing payment of Rs. 47,84,777/-and within a period of one month the amendment application was filed. Therefore in view of this subsequent development the amendment application was filled and hence cannot be said to be hit by the proviso to the said provision. The

learned court considering all aspect rightly allowed the application giving liberty to the plaintiff to file their written objection if any.

9. The learned advocate in order to buttress argument relied upon a decision reported in ***LIFE INSURANCE CORPORATION OF INDIA vs SANJEEV. BUILDERS PRIVATE LIMITED AND ANOTHER***¹ where the Hon'ble Supreme Court framed certain guidelines to be followed while dealing with the amendment application which has been followed by the opposite party. The learned court also considered that the proposed amendment will not change the nature and character of the suit. The learned counsel has further relied upon a decision of the Hon'ble Supreme Court which is reported in ***Zarina Siddiqui vs Ramalingam alias R. Amarnathan***² where it was categorically observed that efflux of time and escalation of price of property by itself cannot be a valid ground to deny the relief of specific performance but the court can give reasonable condition including payment of additional amount to the vendor. Therefore in order to assist the court to assess the exact value of the property at the time of final hearing of the suit it was necessary to bring it on record the subsequent development regarding such value of the property and obviously the application could be filed only after having knowledge of the same. Therefore there was no delay caused in filing the application and nothing has been proposed to be amended which will cause any prejudice to the petitioner.

Heard the both the learned advocates.

¹ (2022)16 SCC 1

² (2015) 1 SCC 705

10. The dispute originated on account of alleged noncompliance with the terms and conditions of an agreement of sale entered into between the parties on August 17, 2004 followed by termination of said agreement by the vendor. The dispute travelled to the Hon'ble court at the instance of the predecessor of petitioners herein by filing a suit for specific performance against the vendor, the opposite party herein. The suit was filed before the Hon'ble high Court in the year 2005 however in this application under Article 227 of the constitution of India such facts do not find place however the plaint annexed with the revisional application confirms the filing of suit as submitted before this court by the learned advocate of the opposite party. The Hon'ble High court was pleased to pass an order of status quo with regard to the property and on the basis of an application filed by the opposite party under Order 7 Rule 11 of the Code of Civil Procedure on the ground of lack of jurisdiction ,an amendment was sought for by the plaintiff and was allowed. However the Hon'ble court lastly dismissed the suit giving liberty to the petitioner to file it before appropriate forum, hence filed the subsequent suit in the year 2013. Since the suit was filed on the basis of an unregistered Sale Agreement the learned trial court passed the order of impounding of the same and sent before the collector 24,Parganas (south) to determine the market value and to assess the stamp duty. It transpires from record that the petitioner had to approach the Hon'ble court for expeditious disposal of such process and lastly it was assessed at Rs. 47, 84 777/-. The opposite party after the Report was filed before the Trial Court regarding the assessment, took out the application for amendment of written statement to incorporate those subsequent development for proper

adjudication of the dispute. The application was filed when the trial has commenced and the first objection raised by the petitioner is, it is hit by the proviso to Order 6 Rule 17 of the Code of Civil Procedure. Therefore it is necessary in this circumstances to look into the said provision.

11. *Order 6 Rule 17 of the code of civil procedure reads as follows;*

The court may at any stage of the proceeding, allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy Between the parties;

Provided 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 would not have raised the matter before the commencement of trial.

12. So primarily it is incumbent upon the petitioner to give sufficient cause and plausible explanation regarding the cause of delay in filing such application for amendment and it is the duty of the Court to assign the reasons as to why even after commencement of trial it has become necessary to allow the prayer for amendment. Since the point has been raised pertaining to the acceptability of the amendment application of written statement after commencement of trial in going beyond the proviso clause of Order 6 Rule 17 of the Code , let me now discuss the various judicial pronouncements in this regard.

13. In **Usha Balasaheb Swamy versus Kiran Appaso Swami** ³, it was observed by the Hon'ble Supreme Court that in case of amendment of written statement' the court would be more liberal in allowing than that of a plaint, as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed.

14. In the decision relied upon by the learned advocate of the opposite party in **Life Insurance Corporation of India vs Sanjeev Builders Pvt Ltd and another**, (supra) the prayer for amendment of plaint for the purpose of enhancing the amount towards damages in a suit for specific performance of an agreement was considered by the Hon'ble Supreme Court, referring to the proviso to Section 21(5) and 22(2) of Specific Relief Act 1963. It was held in paragraph 67. *It is not, as if, in the absence of these two provisos, it is not permissible in law for the plaintiff to carry out an amendment in his pleading by introducing a relief for enhanced compensation. Further Rule 17 of Order 6, CPC does confer power on a court to allow a party to alter or amend his pleading in such manner, on such terms as may be just. This Rule does not stop at that, but it further says that all such amendments should be made as may be necessary for the purpose of determining the real question in controversy between the parties. It is pertinent to note that this provision which empowers the court in its discretion to permit a party to amend his pleadings was already on the statute book, when specific Relief Act 1963 was enacted. Therefore, it cannot be successfully urged that a suit for specific performance falling under the provisions of the 1963 Act would not be*

³ (2000) 7SC 1663

governed by the provisions of CPC. It is therefore clear that to such a suit, the provisions contained in Order 6 Rule 17 CPC would apply and plaintiff who has earlier fail to incorporate the relief for compensation or who has incorporated the relief for compensation, but seek amendment in the same could seek the permission of the court to introduce these relieves by way of amendment.

15. The Hon'ble Supreme Court in the above case after considering various judicial pronouncement summed up their final conclusions, which are as follows:-

71.1) Order 2 Rule 2 CPC operates as a bar against the subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its view. The plea of amendment being barred under Order 2 Rule 2 CPC is, thus, misconceived, and hence negatived.

71.2 All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word.' shall.' in the latter part of 6 Rule 17 CPC.

71.3 The prayer for amendment is to be allowed:

71.3.1) if the amendment is required for effective and proper adjudication of the controversy between the parties,

71.3.2) to avoid multiplicity of proceedings, provided

a) the amendment does not result in injustice to the other side,

b) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which comforts a right on the other side, and

c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued, right(in certain situations).

71.4) A prayer for amendment is generally required to be allowed, unless

71.4.1) By the amendment, a time barred claim is not to be introduced, in which case the fact that the claim would be time, barred becomes a relevant factor for consideration.

71.4.2) amendment changes the nature of the suit

71.4.3) the prayer for amendment is mala fide,

71.4.4) by the amendment, the other side loses a valid defence

71.5) In dealing with appear for amendment of pleadings, the court should avoid a hyper technical approach, and is ordinarily required to be liberal, especially where the opposite party can be compensated by cost.

71.6) Where the amendment would enable the court to pin pointedly, considered the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

71.7) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

71.8) Amendment may be justifiably where it is intended to rectify the absence of material particulars in the plaint.

71.9) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is Arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

71.10) the amendment changes, the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed.

In Paragraph 71.11 it was discussed that where amendment is sought for before commencement of trial the Court is required to be liberal in its approach and equally where the amendment is necessary for the Court to effectively adjudicate on the main issues in controversy the amendment should be allowed.

16. Therefore from the above judicial pronouncement the intent of the legislature and the interpretation of the same regarding the amendment of the pleadings appears to be when amendment prayed for in respect to the plaint, are to be allowed. In this case admittedly the suit was filed in the year 2005 and the valuation was finally assessed much after due to various reasons (this court refrains from making any observation touching the merit of the proceeding) and the amendment was sought for to incorporate such fact which undoubtedly relates to enhanced rate of valuation of the disputed property. However as discussed above the proposed amendment will not definitely change the nature or character of the suit and neither introduces

any foreign issues to be decided upon. By incorporating the same the defendant wanted to place the time span taken in the litigation and how he has been prejudiced due to steep escalation of market value. The apprehension of the petitioner that by incorporating this fact the defendant wanted to raise the hardship issue can found no legs to stand on in view of the catena of decisions in this regard.

17. In *Nirmala Anand versus Advent Corporation Private Ltd. and others*

reported in ⁴ Where the question to determine was that whether the appellant shall be directed to the respondent to pay any additional sum if so, what amount since there was a skeleton of real estate prices and announced value of the flat in question. It was observed in that ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price, during the pendency of the litigation and accordingly directed the appellant to pay some reasonable additional amount at the time of disposal of the proceeding before the Hon'ble court. In the decision as relied upon by the learned advocate of the Opposite Party in ***Zaina Siddiqui vs. A. Ramalingam alias R. AmarNathan (supra)*** also, the Hon'ble Apex court observed that '*efflux of time and escalation of price of the property by itself cannot be a valid ground to deny the relief of specific performance. But the court in its discretion may impose reasonable conditions, including payment of additional amount to the vendor. It is equally well settled that the plaintiff is not to be denied specific performance only on account of phenomenal increase of price during the pendency of the litigation*'.

⁴ (2002) 8 SCC 146

18. The object of Order 6 Rule 17 of the code of civil procedure is to take note by the court to all the subsequent events in order to minimise the litigation and to discourage multiplicity of litigation and it is essentially a rule of justice, equity and good conscience and therefore it has time again said by the Hon'ble court by way of various pronouncement that the approach of the Court should be liberal while dealing with an application under order 6 Rule 17 of the Code of Civil Procedure. I do agree with the submission advanced by the Learned Senior Advocate that the order is devoid of any reasoning but at the same time the court cannot ignore that the entire facts proposed to be incorporated are all on record and in terms of judicial order the formalities of impounding took place and also that in the entire process the defendant had no role to play and therefore the learned court only considered that the same are development and it would not change the nature and character of the suit and neither going to prejudiced the petitioners.

19. In view of the above discussion I do not find any merit to interfere with the order of the learned Trial Court and therefore this revisional application is liable to be rejected.

20. This revisional application is dismissed.

21. Hence the order passed by the learned court in T.S NO, 37 of 2013 on 26th September 2024 is hereby affirmed.

22. No order of cost.

23. Let a copy of this order be sent to the learned trial court for necessary information.

24. Photostat certified copy of this order if applied for, will be made available to the applicants within a week from the date of pending requisite.

(CHAITALI CHATTERJEE DAS, J.)

