

01.12.2025
Ct. No. 06
Sl. No.47
skg

C.O. No. 1140 of 2025

Rahul Das & Anr.
Vs.
Narayan Datta & Anr.

Mr. Tanmoy Mukherjee,
Mr. Bibekananda Tripathy

.....for the petitioners

Mr. Pradyot Kumar Das,
Mr. Nil Kamal Ghosh,

...for the opposite parties

1. The petitioner is aggrieved by the order dated February 15, 2025, passed by the learned Civil Judge (Jr. Div.) 2nd Court, Diamond Harbour in Title Suit no. 125 of 2017.
2. At the stage of cross-examination of P.W.1 the court rejected an application for amendment of the plaint.
3. Mr. Tanmoy Mukherjee, the learned Advocate for the petitioners submits that the learned Court allowed the amendment of the written statement also at the stage of cross-examination of P.W.1.
4. The petitioner sought to deal with the averments in the additional written statement by filing a rejoinder. The learned court rejected the said rejoinder, inter alia, holding that the procedure adopted was not correct. Thereafter, the petitioner filed an application for

amendment of the plaint. Then, the learned court held that the amendment should not be allowed because the trial had commenced.

5. In my view, when the additional written statement was allowed to be filed during cross-examination, the petitioners/plaintiffs ought to have been allowed an opportunity to deal with the newly introduced facts. The facts introduced by the defendants in their additional written statement pertained to a proceeding under Section 144 of the Code of Civil Procedure and an order passed by the ACJM, Diamond Harbour.
6. The plaintiffs/petitioners shall be allowed to file a replication dealing with only the facts introduced by the additional written statement. Let such replication be filed within two weeks from date. The learned trial Judge is requested to accept the same upon allowing only those averments dealing with the facts introduced in the additional written statement. If the court finds that there are pleadings beyond what has been permitted by this court, the replication shall not be accepted in respect of such pleadings and the schedule shall be accordingly restricted by the learned trial Judge. The correctness of the contents of either the additional written statement or the replication are not to be adjudicated at this stage. All such facts have to be considered at the trial.

7. The order impugned is modified to the above extent.
8. There shall be no order as to costs.
9. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)