

Sl.30
30.04.2025
Court No.6
BP

C.O. 1460 of 2025

Ishwar Chand Shaw @ Gupta
-versus-
Messers Singh Medical and Organic Private Limited

Mr. Debjit Mukherjee
Ms. Susmita Chatterjee
Mr. Kaustav Bhattacharya
Ms. Priyanka Jana
..for the petitioner

Mr. Ananda Gopal Mukherjee
..for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order being no. 149 dated 20th March, 2025 passed by the learned Civil Judge (Junior Division), 2nd Court at Howrah in Title Suit No. 173 of 2011 which has been renumbered as Title Suit No. 4688 of 2014.

By the order impugned the application under Order 6 Rule 17 of the Code of Civil Procedure praying for amendment of the plaint was allowed.

Mr. Mukherjee, learned advocate appearing for the petitioner submits that the application for amendment of plaint was filed after the commencement of trial without giving any explanation as to why such application could not be filed prior to the commencement of trial. He further submits that the plaintiff/opposite

party herein is trying to fill up the lacuna in the evidence by way of amendment. He further submits that the learned trial judge in spite of holding that the plaintiff/opposite party could have incorporated the matters prior to the commencement of trial with due diligence but allowed the same without assigning any reasons therefor. He further submits that the facts which the plaintiff is now seeking to incorporate was well within the knowledge of the plaintiff at the time of institution of the said suit.

Learned advocate appearing for the opposite party submits that the application for amendment of plaint was filed after the defendant/petitioner amended the written statement. He submits that the application for amendment of the written statement was also allowed after the commencement of trial. He further submits that the proposed amendments are necessary for the purpose of deciding the real controversies between the parties.

Heard the learned advocates for the parties and perused the materials placed.

The opposite party herein filed a suit for eviction under the provisions of Section 6(1) of the West Bengal Premises Tenancy Act, 1997 inter alia on the ground of default and reasonable requirement. In a suit for eviction filed under Section 6(1)(d) of the West Bengal Premises Tenancy Act, 1997 the landlord has to prove that the premises is reasonably required for his own

occupation and such person is not in possession of any suitable accommodation within the said municipal corporation or municipality or in any other area within ten kilometers from such premises where the act extends.

From the schedule of the plaint it appears that the suit property is situated in premises no. 439/1, G.T. Road (South) within ward no.35 of the Howrah Municipal Corporation under Police Station Shibpur in the District of Howrah.

The petitioner herein filed an application for amendment of the written statement for bringing on record the fact that the plaintiff/opposite party herein is in possession of alternative suitable accommodation. Such application was allowed and paragraph 12 (a) was inserted in the written statement by way of amendment.

After going through the statements made in paragraph 12(a) of the amended written statement, this Court finds that the petitioner herein has stated that the plaintiff is in possession of alternative suitable accommodation at the suit holding being no. 439/1, G.T. Road, Shibpur. It was further stated in the said paragraph that the plaintiff is the owner of holding nos. 3 and 4, Chintamony Dey Road under Police Station and District Howrah and 162, Sarat Chatterjee Road as well as 468/1 Sarat Chatterjee Road under Police Station Shibpur.

After the written statement was amended by incorporating the fact that the plaintiff is in possession of alternative suitable accommodation in the suit holding being no. 439/1, G.T. Road, Shibpur the opposite party herein applied under Order 6 Rule 17 for bringing on record the certain facts which led to the construction of additional storeys on the suit building and as to how the same was utilized thereafter.

After going through the plaint and the application under Order 6 Rule 17 of the Code of Civil Procedure, this Court is of the considered view that the proposed amendments are necessary for the purpose of deciding the real controversies between the parties in the said suit.

However, taking note of the fact that such application was filed after the commencement of trial, this Court is of the considered view that the cost imposed while allowing the said application should have been much higher.

The order impugned is modified only to the extent by directing the plaintiff/opposite party herein to pay a cost of Rs. 15,000/- to the defendant/petitioner as a condition for allowing the application for amendment of plaint. The cost as directed by this order shall be paid by the plaintiff to the defendant on or before May 16, 2025.

It is, however, made clear that the cost as directed to be paid is not made within the time limit as

directed hereinbefore the order allowing the amendment of plaint shall stand automatically recalled without any further reference to this Court.

With the above observations and directions, C.O. 1460 of 2025 stands disposed of.

No order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)