

Sl.24
11.06.2025
Court No.6
BP

C.O. 1909 of 2025

Ullash Banerjee & Ors.
-versus-
Kishore Kumar Das

Mr. Rajib Mullick
Mr. Shaunak Ghosh
Ms. Mriganka Chowdhury
... for the petitioners

Mr. Falguni Bandyopadhyay
Mr. Tapan Pramanick
Mr. R. Ballav
..for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the plaintiffs and is directed against an order being no.27 dated 30th April, 2025 passed by the learned Judge, 2nd Court, Presidency Small Causes Court at Calcutta in Ejectment Suit No. 165 of 2021.

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

The petitioner filed a suit for eviction under Section 6 of the West Bengal Premises Tenancy Act, 1997 on the ground of default in payment of rent. The petitioner subsequently filed an application for amendment of plaint in order to incorporate the fact that the defendant /opposite party herein had sublet the suit property in

favour of third parties. Such application for amendment stood rejected by the order impugned.

Mr. Ghosh, learned advocate appearing for the petitioners submits that the proposed amendments came to the knowledge of the petitioners subsequent to the filing of the suit and it is well settled that subsequent events should be allowed to be brought on record by way of amendment. He further submits that the petitioners have specifically explained the reasons as to why the application for amendment of plaint could not have been filed prior to the commencement of trial. In support of such contention Mr. Ghosh, learned advocate appearing for the petitioner places reliance upon a decision of the Hon'ble Supreme Court in the case of Sajjan Kumar Vs. Ram Kishan reported at 2005 (13) SCC 89.

The learned advocate appearing for the opposite party seriously disputed the submission of Mr. Ghosh. He submits that the proposed amendments were well within the knowledge of the petitioners prior to the commencement of trial. He submits that the application for amendment of plaint was filed after closure of the evidence of the plaintiffs. He submits that after commencement of trial such an application for amendment was rightly rejected by the learned trial judge.

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

Order 6 Rule 17 of the Code of Civil Procedure states that the Court may at any stage of the proceedings allow either party to alter or amend his pleading 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.

The proviso thereto 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.

After going through the provisions of Order 6 Rule 17 of the Code of Civil Procedure this Court finds that the Court has been vested with the discretion at any stage of the proceedings to allow a party to alter or amend his pleadings that may be necessary for the purpose of determining the real questions in controversy between the parties. However, the proviso thereto curbs the power of the court to allow an application for amendment 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.

After going through the materials on record this Court finds that in the application under Order 6 Rule 17 of the Code of Civil Procedure the petitioner has

specifically stated that subsequent to the filing of the suit the plaintiffs have discovered that the defendant has sublet the premises in favour of certain third parties. It is not in dispute that such fact was also stated in the affidavit in chief filed by the petitioners.

The Hon'ble Supreme Court in Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another reported at (2022) 16 SCC 1 after noticing several decisions of the Hon'ble Supreme Court and the Hon'ble High Courts held that all amendments are to be allowed which are necessary for determining the real questions in controversy provided it does not cause injustice to the other side. It was further held that the use of the word "shall" in the latter part of Order VI Rule 17 of the Code makes it a mandatory one. The Hon'ble Supreme Court summed up its final conclusions in paragraph 71 of the said reports which is extracted hereinafter:

"71. Our final conclusions may be summed up thus:

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

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 [Order VI Rule 17 of the 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 confers 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 sought to be introduced, in which case the fact that the claim would be time-barred becomes a relevant factor for consideration,

71.4.2. The amendment changes the nature of the suit,

71.4.3. The prayer for amendment is mala fide, or

71.4.4. By the amendment, the other side loses a valid defence.

71.5. In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

71.6. Where the amendment would enable the court to pinpointedly consider 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 allowed 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. Where 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. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

71.11. *Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See [Vijay Gupta v. Gagninder Kr. Gandhi](#))”*

The Hon’ble Supreme Court in the said decision also observed that a prayer for amendment is generally required to be allowed unless by the amendment, a time barred claim is sought to be introduced in which case the fact that the claim would be time barred becomes a relevant factor for consideration; the amendment changes the nature of the suit, the prayer of amendment is malafide or by the amendment the other side loses a valid defence.

The learned advocate appearing for the opposite party submits that the proposed amendment, if allowed, would ultimately change the nature and character of the suit.

This Court is not inclined to accept such submission of the Learned advocate for the opposite party as even if an additional ground is incorporated which is available under Section 6 of the West Bengal

Premises Tenancy Act the suit will still remain a suit under Section 6 of the West Bengal Premises Tenancy Act and the nature and character of the suit cannot be said to have changed by if the proposed amendment is allowed.

Section 6 of the West Bengal Premises Tenancy Act lays down the grounds on which the suit for eviction may be instituted. Clause (a) of Section 6(1) of 1997 Act deals with a case where a tenant has sublet, assigned or otherwise parted with the possession of whole or any part of the premises without obtaining the consent in writing of the landlord or the tenant has used the premises for a purpose other than that for which it was let out without obtaining the consent in writing of the landlord.

After going through the proposed amendment this Court finds that the petitioners have only sought to incorporate an additional ground which is available under Section 6(1) of the 1997 Act.

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. The Hon'ble Supreme Court in Sanjeev Builders Private Limited (supra) has observed that the amendments should be allowed which are necessary for the court to effectively adjudicate on the main issues in controversies between the parties.

In Sajjan Kumar (supra), the Hon'ble Supreme Court even after observing that the plaintiff ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, allowed the application for amendment of plaint as the proposed amendments were held to be necessary for the purpose of bringing to the fore the real question in controversy between the parties.

Merely because of the fact that the trial has commenced, that cannot take away the right of a party to incorporate a fact which is necessary for the purpose of deciding the real controversies between the parties in the suit.

The opposite party also cannot be said to be prejudiced as the opposite party will have a right to controvert the proposed amendments by way of filing an additional written statement.

For all the aforesaid reasons, this Court is inclined to allow the application for amendment of plaint. The application under Order 6 Rule 17 of the Code of Civil Procedure stands allowed. The plaintiffs are directed to file the amended plaint within a period of two weeks from the receipt of server copy of this order upon serving a copy of the same to the learned advocate for the opposite party before the learned trial judge.

The defendant/opposite party herein will be at liberty to file an additional written statement within a

period of two weeks from the date of receipt of a copy of the amended plaint.

The learned trial judge is requested to proceed with the suit in accordance with law. The impugned order stands set aside.

Accordingly, C.O. 1909 of 2025 stands allowed.

There shall be however 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.)