

D/L- 10
03/07/2025
Ct. No.-6
Aritra

C.O. 2328 of 2025

**Tanima Ghosh
Vs.
Joydeep Ghosh**

Mr. Arik Banerjee
Ms. Madhurima Halder
Mr. Rajib Mullick
Ms. Sonia Mukherjee
Mr. Mriganka Choudhury
...for the petitioner

Mr. Ayan Banerjee
Ms. Debasree Dhamali
Ms. Riya Ghosh
....for the opposite party

Affidavit of service filed in Court today is taken on record.

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order dated June 11, 2025 passed by the learned Judge, 5th Bench, City Civil Court at Calcutta in O.C. No.3 of 2023.

By the order impugned, the application for amendment of written statement stood rejected.

Mr. Arik Banerjee, learned advocate appearing for the petitioner submits that during the evidence of P.W.1 the petitioner came across certain medical documents relating to the health of the testator wherefrom it is evident that the testator did not have the physical and mental capacity to execute the last Will and Testament. He further submits that the petitioner has sought to add

a new ground of defence by way of amendment which is permissible under law.

Mr. Ayan Banerjee, learned advocate appearing for the opposite party submits that the proposed amendment is not only contradictory but mutually destructive with the original pleadings. He submits that it is the specific case of the defendant in the written statement that the Will and Testament is a product of fraud and forgery and by way of amendment, the petitioner has sought to contend that the testator did not have the physical capacity to execute the same. The proposed amendment, according to Mr. Ayan Banerjee, is in effect amounting to admission of the execution of the Will.

After going through the impugned order, this Court finds that the learned trial judge rejected such application only on the ground that the application for amendment was filed after the commencement of trial. The learned trial judge held that the petitioner could not bring her case within the purview of the proviso to Order 6 Rule 17 of the Code of Civil Procedure.

After going through the application under Order 6 Rule 17 of the Code of Civil Procedure, this Court finds that it has been specifically stated that in course of the evidence of P.W.1 while the construction work was being carried out in the residence of the petitioner, she came across two very important medical records of the testator from locker which was opened by a carpenter and at that

point of time the petitioner first came across such medical records.

This Court is, therefore, of the considered view that the petitioner has properly explained the reasons as to why the proposed amendment could not have been brought prior to the commencement of trial. The proviso to Order 6 Rule 17 of the Code thus stands satisfied in the case on hand.

The Hon'ble Supreme Court in the case of **Life Insurance Corporation of India vs. Sanjeev Builders Pvt. Ltd. & Anr.**, reported at **(2022) 16 SCC 1** took note of the expression "shall" appearing in the later part of Order 6 Rule 17 of the Code of Civil Procedure and held that all amendments are to be allowed which are necessary for determining the real controversy provided it does not cause injustice or prejudice to the other side. The Hon'ble Supreme Court further observed that delay in applying for amendment alone is not a ground to disallow the prayer. It was further held that 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, amendment must be disallowed.

Thus, it has to be considered whether the proposed amendment was sought to set up an entirely new case which is foreign to the case set up in the original written statement.

Since the learned trial judge has rejected the application for amendment only on the ground that the proviso was not satisfied and this Court has held that the petitioner has explained the reasons for not applying for amendment prior to the commencement of trial, this Court refrains from making any observation as to whether the proposed amendments are necessary for the purpose of deciding the real controversies between the parties.

For the reasons as aforesaid, the impugned order is set aside. The application under Order 6 Rule 17 of the Code of Civil Procedure is restored to the file of the learned trial judge. The learned trial judge is directed to decide the application for amendment of written statement afresh in the light of the observation made herein before. The learned trial judge is requested to make an endeavour to dispose of the application for amendment as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

With the above observation CO 2328 of 2025 stands disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)