

M/L- 12
07/07/2025
Ct. No.-6
Aritra

C.O. 2390 of 2025

Joydeep Bose
Vs.
Smt. Indrani Kar & Anr.

Mr. Partha Pratim Roy
Mr. Sounak Mandal

...for the petitioner

Mr. Nirmalya Das Gupta
Ms. Krishna Mullick

....for the opposite parties

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.50 dated June 11, 2025 passed by the learned Additional District Judge, 16th Court at Alipore, District-South 24-Parganas in Title Appeal No.408 of 2016.

By the order impugned, the application under Order 6 Rule 17 of the Code of Civil Procedure filed by the defendant/petitioner herein for amendment of written statement stood rejected.

Mr. Roy, learned advocate appearing for the petitioner submits that the facts which the petitioner sought to incorporate by way of amendment came to the knowledge of the petitioner during the pendency of the title appeal and such, being a subsequent event, the proviso under Order 6 Rule 17 of the Code of Civil Procedure cannot be an embargo in allowing such amendment. Mr. Roy further submits that the instant

suit is a suit based on title and for such reason the subsequent suit for specific performance of contract has a direct bearing on the title of the opposite parties in the instant suit. Mr. Roy submits that an application for amendment of the written statement stands on a different footing than that of amendment of plaint and, therefore, such an application ought to have been considered in a more liberal manner. Mr. Roy concluded by submitting that the proposed amendments are necessary for the purpose of deciding the real controversies between the parties in the suit.

Mr. Dasgupta, the learned advocate appearing for the opposite parties submits that the petitioner herein sought to incorporate the facts at a belated stage that is during the pendency of the title appeal. He further submits that the proposed amendments are not necessary for the purpose of deciding the real controversies between the parties. He submits that by way of amendment the petitioner sought to make out a new case which does not have the slightest basis in the original written statement.

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

The opposite parties filed a suit for recovery of khas possession against the petitioner herein being Title Suit No.22 of 2024. The learned Civil Judge (Sr. Div.), 3rd Court at Alipore by a judgment and decree dated July 30,

2016 decreed the said suit in favour of the opposite parties thereby declaring that the opposite parties herein are the absolute owners of the suit property and the petitioner was declared as trespassers in the suit property and was directed to quit and vacate the suit property by handing over the vacant possession to the opposite parties/plaintiffs within the time limit as indicated in the said decree.

Being aggrieved by such judgment and decree, the petitioner herein preferred an appeal being Title Appeal No.408 of 2016 which is pending before the learned Additional District Judge, 16th Court at Alipore, District-South 24-Parganas. During the pendency of the said appeal the petitioner herein filed an application under Order 6 Rule 17 of the Code of Civil Procedure praying for amendment of the written statement.

After going through the written statement, this Court finds that it is the specific defence case that the Will by virtue of which the present plaintiff is claiming his title was not acted upon and the plaintiffs were put to strict proof with regard to the distribution of the suit house by the testator by virtue of the said Will. It was further stated in the said written statement that one Hillol Kanti Guha made some arrangements for the distribution of his movable property in the said Will and the Executor of the said Will i.e. the predecessor-in-interest of the plaintiff failed to comply with the direction

of the testator after obtaining the probate of the said Will. In the said written statement it was further stated that the Title Suit No.57 of 2017 which was filed by the mother of the defendant, namely, Late Meena Bose was dismissed and such order has not reached finality as an application is still pending before the Hon'ble Supreme Court of India.

After going through the application under Order 6 Rule 17 of the Code of Civil Procedure, this Court finds that the petitioner herein sought to incorporate the fact that due to intentional latches and negligence on the part of the Hillol Kanti Guha and his legal heirs, one Parul Shasmal filed a Title Suit being No.267 of 2017 before the learned Civil Judge (Sr. Div.), 3rd Court at Alipore praying for a decree of specific performance of contract dated February 2, 1986 in respect of the suit property, for a decree for mandatory injunction and for recovery of khas possession of the first floor of the suit premises which has been mentioned in schedule C of the suit premises.

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**, after noticing several decisions of the Hon'ble Supreme Court and the High Courts held that all amendments are to be allowed which are necessary for determining the real questions in controversies provided it does not cause injustice to the other side. The Hon'ble Supreme Court

further held that the prayer for amendment is to be allowed if the amendment is required for effective and property adjudication of the controversies between the parties and to avoid multiplicity of proceedings provided the amendment does not change the cause of action or an entirely new case foreign to the case set out in the pleadings are made.

The learned judge of the First Appellate Court after taking note of the case made out in the written statement rightly observed that it is not clear as to how the facts relating to pendency of a Title Suit No.267 of 2017 are relevant for the purpose of deciding the instant appeal. The learned judge of the First Appellate court further noted that the cause of action of Title Suit No.2300 of 2016 from which the Title Appeal No.248 of 2016 arose and the Title Suit No.267 of 2017 are independent proceedings with separate causes of action availed by the plaintiffs of the respective cases. The learned judge of the First Appellate Court arrived at a conclusion that the two suits apparently do not have any connection between themselves. The learned judge of the First Appellate Court applied the well-settled principles for deciding an application for amendment.

This Court is of the considered view that the petitioner sought to set up an entirely new case which is foreign to the case already made in the written statement. Though it is well-settled that an application for

amendment of the written statement stands on a different footing than plaint and the same should be construed more liberally but that does not justify allowing an application for amendment which has been sought to make out an entirely new case. To the mind of this Court, the proposed amendment, if allowed, would result in enlarging the scope of the suit which is not permissible.

For all the reasons as aforesaid, this Court is not inclined to interfere with the order impugned.

Accordingly, CO 2390 of 2025 stands dismissed.

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.)