

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 2469 of 2025

Iftekhar Alam

Vs.

M/s. K.N. Paul

For the Petitioner

: Mr. Tanmoy Mukherjee
Mr. Animesh Paul

For the Opposite party

: Mr. Debjit Mukherjee
Mr. Kaustav Bhattacharya
Ms. Priyanka Jana

Heard on

: 24/07/2025

Judgment on

: 24/07/2025

Hiranmay Bhattacharyya , J. :

1. The defendant, who is the appellant in Title Appeal No.94 of 2023 has approached this Court by filing an application under Article 227 of the Constitution of India challenging the orders dated December 5, 2024, December 23, 2024, January 22, 2025 and May 22, 2025,

all passed by the learned Additional District Judge, Fast Track, 1st Court at Howrah in Title Appeal No.94 of 2023.

2. Mr. Tanmoy Mukherjee, learned advocate appearing for the petitioner submits that the petitioner filed an application for amendment of the written statement but the learned judge of the First Appellate Court passed an order on December 5, 2024 thereby directing the appellant to file the amended memo of appeal on the next date. Mr. Mukherjee submits that an application under Order 41 Rule 27 along with the application under Order 6 Rule 17 of the Code of Civil Procedure for amendment of written statement were filed and the learned judge of the First Appellate Court did not fix any date for hearing of the application under Order 41 Rule 27 of the Code of Civil Procedure. Mr. Mukherjee further submits that on May 22, 2025 the petitioner filed an application under Section 151 of the Code of Civil Procedure, but the learned judge of the First Appellate Court instead of fixing a date for hearing of such application fixed a date for delivery of judgment. Mr. Mukherjee submits that though the petitioner who is the appellant in the aforesaid title appeal had filed the written notes of argument but the petitioner was not allowed to advance any oral argument in support of the appeal as well as the application under Order 41 Rule 27 of the Code of Civil Procedure.
3. Mr. Debjit Mukherjee, learned advocate appearing for the opposite party submits that the petitioner complied with the order allowing

the application for amendment of the written statement by filing an amended written statement. He further submits that the appellant, who is the defendant in a suit for eviction is trying to delay the hearing of the appeal on frivolous grounds. He submits that the petitioner herein after advancing oral argument in part thereafter filed an application for amendment of the written statement and the application under Order 41 Rule 27 of the Code of Civil Procedure in order to delay the hearing of the appeal. He further submits that the opposite party was, therefore, was compelled to file an application under Article 227 of the Constitution being CO 2561 of 2024 praying for a direction upon the learned judge of the Appellate Court to dispose of the appeal expeditiously and a co-ordinate Bench, by an order dated September 19, 2024, passed a direction upon the learned judge of the Appellate Court to dispose of the appeal expeditiously without granting any unnecessary adjournments to either of the parties.

4. Heard the learned advocates for the respective parties and perused the materials placed.
5. Record reveals that November 22, 2023 was fixed for hearing of the appeal. On that date the petitioner herein prayed for time on the ground of the learned senior advocate and the learned judge of the Appellate Court allowed such prayer and fixed January 6, 2024 for hearing of this appeal. On January 6, 2024 the learned judge of the First Appellate Court heard the argument of the appellant/petitioner

herein in part and on the prayer of the learned advocate for the petitioner fixed April 2, 2024 for hearing of the appeal and it was recorded in the said order dated April 2, 2024 that no further adjournment shall be granted. On June 20, 2024 the learned judge of the Appellate Court adjourned the hearing of the appeal for the ends of justice and fixed July 3, 2024 for hearing of the appeal and observed that no further adjournment shall be granted.

6. At this stage it would be relevant to point out that the co-ordinate Bench passed an order in CO 2561 of 2024 on September 19, 2024 requesting the learned judge of the Appellate Court to make all endeavour to dispose the appeal as expeditiously as possible and in accordance with law and in doing so shall not grant any unnecessary adjournment to either of the parties.
7. Record reveals that thereafter the opposite party filed a petition for preponing the date along with the copy of the order passed in CO 2561 of 2024. On November 13, 2024 the petitioner filed two applications one under Order 6 Rule 17 of the Code of Civil Procedure for amendment of written statement and the other under Order 41 Rule 27 of the Code of Civil Procedure praying for leave to adduce additional evidence. The learned judge of the Appellate Court fixed November 22, 2024 for hearing of the appeal along with the applications under Order 41 Rule 27 of the Code of Civil Procedure and under Order 6 Rule 17 of the Code of Civil Procedure.

8. At this stage this Court is faced with two orders on which strong reliance has been placed by Mr. Tanmoy Mukherjee in course of argument. Mr. Tanmoy Mukherjee submits that the petitioner could not comprehend as to which one of the aforesaid two order is the correct order. It appears from a bunch of certified copy containing two orders, one dated November 20, 2024 and the other one the date of which was typed as December 9, 2024 and, thereafter, struck off and the date was corrected as December 5, 2024 by hand. It appears from the said order that the petitioner was directed to file the amended memo of appeal by the next date positively.
9. However, in the bunch of certified copy containing several orders starting from orders dated July 18, 2023 and ending with the order dated May 22, 2025, this Court finds that there is another order being No.16 dated December 5, 2024. It appears from the said order that the learned judge of the Appellate Court after being satisfied that the schedule of the application for amendment reveals that the proposed amendment of the written statement is formal in nature and not likely to cause any prejudice to the respondent or change the nature of the case allowed the prayer for amendment of written statement on contest with cost of Rs.200/-. The petitioner was directed to file the amended written statement by the next date fixed.
10. Mr. Tanmoy Mukherjee would contend that the amended written statement was filed by the petitioner herein on December 23, 2024.

Thus, it is evident that the petitioner was conscious of the fact that his application for amendment of the written statement has been allowed and pursuant to such an order the petitioner has also filed the amended written statement.

11. Mr. Tanmoy Mukherjee would vehemently contend that when the petitioner filed the applications under Sections 151, 152 and 153 of the Code of Civil Procedure praying for correction of the order dated December 5, 2024 which is appearing in the bunch of the certified copy containing two orders, the learned judge of the First Appellate Court ought to have decided such application prior to proceeding with the hearing of the title appeal.
12. However, instead of entering into that controversy, this Court finds that in the second bunch of the certified copy containing several orders, the order dated December 5, 2024 records that the application for amendment of the written statement has been allowed and it also not in dispute that pursuant to the said order the petitioner has filed the written statement, no useful purpose would be served in directing the learned judge of the First Appellate Court to decide the applications under Sections 151, 152 and 153 of the Code of Civil Procedure at this stage as it is not the case for either of the parties that amendment of the Memo of appeal was sought for.
13. Now this Court has to consider the effect of the application under Section 151 of the Code of Civil Procedure which was filed by the

petitioner on May 22, 2025. As rightly pointed out by Mr. Debjit Mukherjee, learned advocate for the opposite party that by such application the petitioner herein prayed for an order for giving direction to the learned trial judge for framing an issue on the point of *res judicata* and to dispose of the same on merit in view of the plea as taken in the written statement by way of amendment before the learned judge of the First Appellate Court.

14. The learned judge of the First Appellate Court, by the order dated May 22, 2025, observed that the same will be taken for consideration at the time of delivery of judgment, if required.
15. Mr. Tanmoy Mukherjee, learned advocate appearing for the petitioner would contend that when an interlocutory application is filed the same ought to have been taken up for consideration prior to fixing the date for delivery of judgment.
16. From the tenor of the application filed under the provisions of Section 151 of the Code of Civil Procedure, this Court finds that the petitioner prayed for a direction upon the learned trial judge to request the learned trial judge to frame an issue and, thereafter to dispose of the same on merit.
17. When an appeal is pending before the learned judge of the First Appellate Court the question as to whether the matter should be remanded to the learned trial judge or would frame issues and refer them for trial to the trial judge would arise when the learned judge of the Appellate Court would finally decide the appeal. Whether the

learned trial judge has omitted to frame or try any issue or additional evidence is required to be taken cannot be decided in isolation with the hearing of the appeal.

18. Thus in the considered view of this Court, the learned judge of the Appellate Court was perfectly justified in keeping the application filed by the petitioner under Section 151 of the Code for consideration at the time of delivery of judgment.
19. However, it is not in dispute that the petitioner advanced his oral argument in part. Though the petitioner has filed the written argument, to the mind of this Court, the petitioner has to be given an opportunity to make oral argument in support of the appeal as well as the application under Order 41 Rule 27 of the Code of Civil Procedure which was directed to be heard along with the appeal by an order being No.14 dated November 13, 2024.
20. Considering the fact that the August 25, 2025 has been fixed for delivery of judgment, this Court feels that a liberty should be granted to the petitioner to file an application for fixing a date for oral argument of the appellant/petitioner. If such an application is filed on or before July 30, 2025, the learned Additional District Judge, Fast Track, 1st Court at Howrah shall consider the same and fix a date of hearing prior to August 25, 2025 as per the convenience of the learned judge of the First Appellate Court.
21. Mr. Debjit Mukherjee, learned advocate for the opposite party assures this Court that the opposite party shall cooperate with the

learned judge of the First Appellate Court and shall not oppose the prayer for fixing a date for early hearing of the title appeal.

22. With the above observations and directions CO 2469 of 2025 stands disposed of.

23. There will be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)

Aritra Ghosh
A.R. (Court)