

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA

Civil Revisional Jurisdictionn

Appellate Side

Present :

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 2682 of 2025

**Dr. Arpan Khan
-Versus-
Smt. Debika Das Gupta**

For the petitioner : Mr. Bratin Kumar Dey
Mr. Joydeep Das

For the Opposite parties : Mr. Anirban Ghosh
Mr. N. Khan
Ms. Debjani Kundu

Heard On: : 28.07.2025

Judgment On: : 28.07. 2025

Hiranmay Bhattacharyya, J.

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order dated July 11, 2025 passed by the learned Civil Judge (Senior Division), 5th Court at Alipore in Title Suit No. 111 of 2015.

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

The opposite party herein filed a suit for eviction on the grounds as enumerated under Section 6 of the West Bengal Premises Tenancy Act, 1997. The petitioner herein is contesting the said suit by filing a written statement. After the cross-examination of DW-1 was completed and the defendant witness was discharged, the petitioner filed an application for amendment of the written statement.

Heard the learned advocate for the opposite party on such submission.

Mr. Dey, learned advocate appearing for the petitioner places reliance upon a decision of the Hon'ble Supreme Court in the case of Usha Balasaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors. reported at (2007) 5 SCC 602 in support of his contention that an application for amendment of written statement shall have to be considered more liberally than an application for amendment of plaint.

By way of amendment, the petitioner sought to introduce the fact that the petitioner is a tenant in respect of the suit property since April, 2002.

The opposite parties have claimed that the petitioner was inducted as a monthly premises tenant under the opposite parties in terms of an agreement of tenancy dated September 1, 2011. In course of hearing of this civil revisional application a copy of the

evidence of the D.W.-1 was produced by Mr. Dey, learned advocate for the petitioner.

After going through the said evidence this Court finds that in the cross-examination, the petitioner has admitted that the petitioner had entered into one tenancy agreement in respect of the suit premises for a period of three years. A copy of the said tenancy agreement dated September 1, 2011 has also been produced by Mr. Dey, learned advocate for the petitioner in course of hearing of the civil revisional application.

There is no quarrel to the aforesaid proposition of law. However, the decision in the case of Usha Balasaheb Swami (supra) is not an authority for the proposition that the defendant can take a new line of defence by way of amendment. As observed hereinbefore, the petitioner has admitted in the cross-examination that he was inducted into the suit property by virtue of the tenancy agreement in the year 2011. The proposed amendment would amount to withdrawing the admissions made by the petitioner in the cross-examination, which is not permissible in view of the Three Judge Bench judgement of the Hon'ble Supreme Court in the case of Modi Spinning & Weaving Mills Co. Ltd & Another Vs Ladha Ram & Co reported in (1976) 4 SCC 320.

After going through the materials on record this Court is of the considered view that the petitioner is trying to withdraw the admission that he was inducted by virtue of the tenancy agreement dated September 1, 2011. The Hon'ble Supreme Court in Basavan

Jaggu Dholi Vs Sukhnandan Ramdas Chaudhury reported at 1995 Supp (3) SCC 179 held that it would not be open to a party to wriggle out of admission as admission is a material piece of evidence which would be in favour of a party who would be entitled to take advantage of that admission. That apart the petitioner is trying to take a new line of defence by way of proposed amendment which is not permissible in law. Moreover, the application for amendment was filed at the stage of argument i.e. long after the trial has commenced. Proviso to Order 6 Rule 17 stands attracted to the case on hand. The petitioner could not satisfy that he was prevented by sufficient cause for not filing the application for amendment prior to the commencement of trial.

In Usha Balasaheb Swami (Supra), the Hon'ble Supreme Court on the facts of the reported case held that by way of amendment of written statement the admission was kept intact and only a proviso was added which is permissible in law as it is not a case of withdrawing the admission. The facts of the said reported case being distinguishable cannot come to the petitioner in the case on hand.

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

Accordingly C.O. 2682 of 2025 stands dismissed.

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.)