

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Hiranmay Bhattacharyya.

C.O. 3172 of 2025

Smt. Chaitali Ghosh.

Vs.

Smt. Mondira Ghosh.

Mr. Abhijit Ray,
Md. Ahamsher Ahmed,
Mr. Santu Nandy,
Mr. Atanu Chakraborty, ...for the petitioner.

Ms. Shohini Chakraborty,
Mr. Sayantan Bose,
Ms. Priyanka Gope, ...for the opposite party.

Heard on : September 3, 2025.

Judgment on : September 3, 2025

1. 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. 18 dated June 17, 2025 passed by the learned Judge, Xth Bench, City Civil Court, Calcutta in Title Suit No. 1527 of 2022.
2. By the order impugned, the application under Order 8 Rule 9 of the Code of Civil Procedure stood rejected.
3. The opposite party filed a suit for declaration that the petitioner is in illegal and unlawful possession of the suit premises as a rank

trespasser thereof and for eviction of the petitioner and for other consequential reliefs. In the said suit the evidence of PW-1 has already started and the petitioner cross-examined the PW-1 on several dates. At that stage, an application under Order 8 Rule 9 of the Code of Civil Procedure was filed by the petitioner herein praying for leave to file an additional written statement with counter claim. The learned Trial Judge, by the order impugned, rejected such application.

4. Being aggrieved, the defendant has approached this Court.
5. Mr. Ray, learned advocate appearing for the petitioner submits that the petitioner is a widow who is contesting the suit by filing a written statement. He further submits that the petitioner consulted with one learned senior advocate at the time of cross-examination of PW-1, who advised the petitioner to file an application praying for leave to file the additional written statement with counter claim as relevant facts have not been stated in the Written Statement. He submits that unless the leave as sought for by the petitioner is allowed, the petitioner will suffer irreparable loss and injury.
6. Ms. Chakraborty, learned advocate appears for the opposite party. She submits that the petitioner sought for leave to file an additional written statement to incorporate certain facts as well as to set up a counter claim. She submits that setting up a counter claim after

framing of issues is impermissible in view of the decision of the Hon'ble Supreme Court in the case of **Ashok Kumar Kalra Vs. Wing CDR. Surendra Agnihotri & Ors.** reported in **(2020) 2 Supreme Court Cases 394**. She further submits that the leave to incorporate the facts other than setting up the counter claim also was rightly rejected by the learned Trial Judge as the petitioner approached the learned Trial Judge at a highly bleated stage. She further submits that the application under Order 8 Rule 9 of the Code of Civil Procedure was filed in order to bypass the proviso to Order 6 Rule 17 of the Code of Civil Procedure.

7. Heard the learned advocate for the parties and perused the materials placed.
8. Three Hon'ble Judges of the Supreme Court in **Ashok Kumar Kalra (Supra)** held that the Court has to take into consideration, the outer limit for filing the counter claim which is prayed till the issues are framed. One of the Hon'ble Judges while partly supplementing and partly dissenting with the aforesaid view observed that in exceptional circumstances, to prevent the multiplicity proceedings, the Court may entertain a counter claim even after the framing of issues, so long as the Court has not started recording the evidence. Thus, it is well settled that the counter claim may be allowed to be set up after framing of issues in exceptional cases but the same cannot be

allowed after the recording of the first witness of the plaintiff has started.

9. It is not in dispute that the application under Order 8 Rule 9 of the Code of Civil Procedure was filed after the cross-examination of the first witness of the plaintiff continued for some time. For such reason, this Court is not inclined to allow the prayer of the petitioner to incorporate the counter claim by way of subsequent pleading.
10. After going through the proposed additional written statement which has been annexed at page 29 of the civil revision application, this Court finds that paragraphs 1 and 2 of the said proposed additional written statement relates to incorporation of certain facts by way of subsequent pleading.
11. A party to a proceeding can amend the pleadings by applying under Order 6 Rule 17 of the Code of Civil Procedure. The proviso to Order 6 Rule 17 of the Code of Civil Procedure 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.
12. It is not in dispute that in the case on hand, the trial of the suit has already commenced and, therefore, the proviso to Order 6

Rule 17 of the Code of Civil Procedure may operate against the petitioner in case of amendment of Written Statement.

13. There is substance in the argument of Ms. Chakraborty, learned advocate appearing for the opposite party that a party to a suit has to apply under Order 6 Rule 17 of the Code to incorporate relevant facts and leave under Order 8 and Rule 9 should not be allowed, if the object is to bypass the proviso to Order 6 Rule 17.
14. Proviso to Order 6 Rule 17 of the Code of Civil Procedure no doubt limits the power of the Code to allow an application for amendment of pleadings after the commencement of trial but the proviso cannot be an absolute embargo to allow the application for amendment after the commencement of trial, if the party applying for amendment is able to satisfy the Court that in spite of due diligence he could not have raised the matter before the commencement of trial.
15. Order 8 Rule 9 of the Code of Civil Procedure also does not confer an unfettered right upon the party to file a subsequent pleading, as the leave of the Court has to be obtained, for such purpose. The Court while considering as to whether leave has to be granted to an party applying under Order 8 Rule 9 of the Code of Civil Procedure has to take into consideration the circumstances that might have prevented the party applying under Order 8 Rule 9

of the Code to approach the Court at an earlier point of time. Thus, by approaching the Court under the provisions of Order 8 Rule 9 of the Code of Civil Procedure, a party cannot be allowed to bypass the rigors of the proviso to Order 6 Rule 17 if the object of filing the application under Order 8 Rule 9 is to incorporate the facts which, according to the applicant, may be necessary for deciding the real controversy between the parties in the suit.

16. However, as observed hereinbefore, the proviso to Order 6 Rule 17 is not an absolute embargo upon the Court to allow an amendment after the commencement of trial and, therefore, this Court has to consider as to whether the petitioner has satisfactorily explained the delay in approaching the Court seeking leave under Order 8 Rule 9 of the Code of Civil Procedure. After going through the written statement this Court finds that except denials of the averments made in the plaint no positive defence appears to have been made out excepting by stating that the petitioners are residing in the suit property more than three decades as co-owners/co-sharers. From paragraphs 1 and 2 of the proposed additional written statement, this Court finds that the petitioner sought to explain her right to occupy the suit property. After going through the statements contained in paragraphs 1 and 2 of the proposed additional written statement, this Court is of considered view that

such facts are necessary for the purpose deciding the real controversies between the parties in the suit.

17. The object behind allowing a party to amend the pleadings or to file a subsequent pleadings is adjudication of the dispute between the parties effectively.
18. It is not in dispute that the petitioner is a widow and had engaged an advocate to contest the suit. a litigant has to depend on the advice of the learned advocate. It is only the duty of the litigant to state the facts and it is for the advocate to draft the pleadings accordingly. It is well-settled that a party should not be made to suffer, if certain facts have inadvertently not been stated in the written statement provided the same are relevant for adjudication of the dispute.
19. As observed hereinbefore except the denial of the allegations contained in the plaint the defence case has not been properly stated in the written statement.
20. After going through the application praying for leave to file subsequent pleading, this Court is of the view that the delay in seeking leave to file additional written statement has been satisfactorily explained. For such reason this Court is inclined to interfere with the order impugned in so far as rejecting the prayer for

filing an additional written statement excepting setting up the counter claim is concerned.

21. For the reasons as aforesaid, C.O. 3172 of 2025 stands disposed of by granting leave to the petitioner to file an additional written statement containing only the statements contained in paragraph 1 and 2 of the proposed additional written statement which is annexed at page 29 of this civil revision application subject to certain conditions. The impugned order stands modified to the extent as aforesaid. The learned Trial Judge is directed to accept the additional written statement, if filed in accordance with the observations made hereinbefore on or before 7(seven) working days from date of receipt of a server copy of this order subject to payment of cost of Rs.15,000/- by the petitioner to the opposite party herein through the learned advocate on record representing the opposite party before this Hon'ble Court on or before September 11, 2025.

22. It is however made clear that in the event the petitioner fails to pay the costs or file the additional written statement within the time limit as indicated hereinbefore, this order shall automatically stands recalled without any further reference to this Court and the civil revision application shall stand dismissed.

23. It is however made clear that the prayer sought for to file a subsequent pleading in so far as paragraph 3 onwards of the said

proposed additional written statement stands rejected. If the petitioner files the subsequent pleading in terms of this order within a period as indicated hereinbefore, the opposite party shall be at liberty to take appropriate steps in accordance with law pursuant to this order.

(Hiranmoy Bhattacharyya, J.)