

Sl.5
09.09.2025
Court No.6
BP

C.O. 3293 of 2025

Ajay Chowdhury
-versus-
Sisir Kumar Dutta & Ors.

Mr. Sounak Mandal
Mr. Anirban Saha Roy
...for the petitioner

Ms. Sohini Chakraborty
Ms. Prajaaini Das
...for the opposite party no.1

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order dated 6th August, 2025 passed by the learned Civil Judge (Senior Division), 10th Court at Alipore in Title Suit No. 1129 of 2018.

By the order impugned the application under Order 6 Rule 17 of the Code of Civil Procedure praying for amendment of plaint stood rejected.

Mr. Mandal, learned advocate appearing for the petitioner submits that the petitioner did not try to make out a third case by way of amendment. He further submits that the petitioner wanted to seek relief on the basis of the pleading which were already existing in the original plaint. Mr. Mondal places reliance upon a decision of the Hon'ble Supreme Court in the case of Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited reported at (2022) 16 SCC 1 in support of his contention that the prayer for amendment should be liberally construed.

Heard Ms. Chakraborty, learned advocate for the opposite party no.1 on such submission.

It is not in dispute that the application under Order 6 Rule 17 of the Code of Civil Procedure was filed at the stage of argument of the suit.

Thus the proviso to Order 6 Rule 17 of the Code of Civil Procedure stands attracted to the case on hand. After going through the application under Order 6 Rule 17 of the Code of Civil Procedure this Court finds that no explanation for the belated filing of the application has been given.

That apart the petitioner filed the suit claiming to be a lawful occupier in respect of the suit property with permanent settlement and the defendants/opposite parties are the strangers in respect of the suit property. The defendants/opposite parties herein are contesting the said suit by filing a written statement. It is the specific case of the defendants/opposite parties herein that they have obtained the possession of the suit property by executing the decree. It is also not in dispute that the defendants/opposite parties herein have filed a separate suit claiming recovery of possession. Such facts are not in dispute.

In the plaint, the petitioner has claimed to be a lawful occupier of the property and the defendants/opposite parties, who are strangers are creating disturbances in the peaceful possession of the

petitioner in the suit property. The petitioner has not claimed his title in respect of the suit property. By way of amendment, the petitioner seeks a declaration that the defendants/opposite parties do not have any right, title and interest over the suit property. A new case was sought to be made at the stage of argument, which is not permissible.

The delay in filing the application for amendment of plaint has not been satisfactorily explained. The Hon'ble Supreme Court in Life Insurance Corporation (supra) held that the prayer for amendment is to be allowed if the amendment is required for effective and proper adjudication of the controversies between the parties and in order to avoid multiplicity of proceedings provided the amendment does not raise a time barred claim resulting in divesting of the other side of a valuable accrued right in certain situation. It is not in dispute that the defendants/opposite parties have filed an independent suit and the petitioner herein has sought to challenge the title of the defendants/opposite parties herein at the stage of argument. Such a claim is undoubtedly a time barred claim when the initial suit was filed sometimes in the year 2018 and the amendment application was filed only in the year 2025. The learned trial judge after considering the law laid down by this Hon'ble Court as well as the Hon'ble

Supreme Court rejected the prayer for amendment by a speaking order.

For such reason, this Court is not inclined to interfere with the order impugned.

Accordingly, C.O. 3293 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.)