

IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CO 3657 OF 2024

BIMAL KUMAR DHARA

VS

BIDYUTLATA JANA & ORS.

For the Petitioner : Mr. Dyutiman Banerjee, Adv.

Mr. Vishal Mallick, Adv.

Mr. Salil Kumar Maity, Adv.

Last heard on : 25.09.2025

Judgement on : 25.09.2025

CHAITALI CHATTERJEE DAS, J. :-

1. In this case, petitioner was directed to serve the copy of the revisional application to the opposite parties, and accordingly the petitioner served the same but no one represented the Opposite Parties and the matter was adjourned for giving a further opportunity to the opposite parties. An affidavit of service was filed on 19.9.25 from which it can be gathered that the item was delivered, but no one turned up. Today, also, no one appears on behalf of the opposite party, hence the matter is heard in absence of the Opposite Party.
2. This revisional application has been filed against an order dated 1.8.2024 passed by the Learned Civil Judge, Junior Division, Haldia, at Purba Midnapore in Title suit No. 187 of 2011. It is the case of the petitioner that the opposite party No.1 herein being the plaintiff filed a suit for declaration and injunction against the petitioner and the pro forma opposite parties before the

Learned Civil Judge (Junior Division) at Haldia stating there in that the plaintiff is the owner of the suit property and the defendants have no right title and interest over the suit property .Taking advantage of a wrong recording in the record of rights their possession of the property is disturbed by the defendants without having any right to do the same.

- 3.** On 1.12.2018, the petitioner filed his written statement denying all the materials and contentions there in and on 28.7.2022 filed an application for filing additional written statement for incorporating some facts which are material for adjudication of lis. On 10.6.2024, the petitioner filed an application under order 6 Rule 17 of the code of civil procedure for amendment of his written statement which was objected to by the opposite party No.1 who filed her written objection to the same. The learned court, vide the order impugned rejected the same by holding that the petitioner herein had filed the amendment application after an inordinate delay.
- 4.** Being aggrieved thereby, this revisional application has been filed on the ground inter alia that the Learned Court erred in law in rejecting the application without considering that the said amendment is material for adjudication of the lis.
- 5.** The matter pertains to refusal of order to entertain the amendment application on the score that it was filed after an inordinate delay. The application was heard by the Learned Court when no step was taken by the other defendants and the suit was directed to be proceeded as Ex-parte against all the defendants, except defendant no.37. The defendant no. 37 filed the additional written statement and it was 'not pressed' on 28.7.2022, since it was filed without taking any application for amendment of written statement.

- 6.** The learned court observed that the applicant prayed to insert sale Deed being 1265./1950 by which the property was transferred by Gunadhar Samanta to Nandadulal Samanta and by virtue of sale deed number 1178/1957, Nandadulal Samanta had transferred his property to Gunadhar Samanta, and lastly, Sudhir Chandra Samanta had transferred his property vide Sale number 4814/1958, and all these facts are completely new and will change the nature and character of the suit.
- 7.** The Learned Court further observed that the deeds are of the year of 1950, 1957 and 1958, and even the defendant is trying to add new legal heir to the suit, which would create cloud as to the knowledge of the defendant regarding the legal heir and the deeds as it appears to the court that the defendant had sufficient knowledge about this fact.
- 8.** The Learned Advocate would submit that the application could not be filed due to delay in receiving the certified copies of the deeds on the basis of which such amendment application was to be filed and that fact has been mentioned in the application itself. On perusal of the application filed under Order 6 Rule 17 of the Code of Civil Procedure, it is seen that by way of an amendment of written statement, the defendant wanted to add the name of Narayan Chandra as a party as well as the wife of one Nagendra, namely Bhima Bala Dei . That apart in paragraph 24, the defendant wanted to incorporate the name of the widow of Nagendra Bhima Bala and daughter Shobha Rani, who sold the disputed property in the year 1949, vide the deed of sale to Gajendra Nath Samant, and therefore the claim of Bidyutlata Jana the defendant no.1 over the suit plot number 2120 is not correct. He further wanted to incorporate that

on various dates by virtue of disputed properties were transferred by the son of Narayan Chandra Samanta.

- 9.** It is a settled law that Court should be extremely liberal in granting the prayer for amendment unless serious injustice or loss is caused to the other side. That apart, it is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle though some principles are certainly common to both, but the rules that restrain the plaintiff to amend his pleadings or to alter materially or to substitute his cause of action or the nature of his claim may not be applicable in similar manner relating to amendment of the written statement.
- 10.** It was observed by the Hon'ble Supreme court in number of cases that the courts are inclined to be more liberal in allowing amendment of the written statement than of plaint .It is also a settled law that though the basic principles to deal with the amendment of plaint and amendment of written statement are different but the proviso clause added in the provision is equally applicable in both cases. The Court will be extremely liberal in allowing the application for amendment of written statement subject to the due diligence shown by the party.
- 11.** In the instant case the defendant/petitioner did not give an explanation in the amendment application as to why there has been a delay in filing such amendment application when it is glaringly visible that those deeds were known to them long before the inception of the suit. That apart, the defendant no.37 filed the additional written statement which was withdrawn as "not pressed" because no application was filed for amendment of written statement. Furthermore, the petitioner by virtue of such amendment of written statement

wanted to incorporate the legal heirs of deceased person when it was not stated as to whether any application for addition of party or for substitution was earlier filed or not. The law does not permit the court to allow addition of party under the garb of amendment of written statement.

12. More so by virtue of such amendment, the defendant wanted to change the real question of controversy and also wanted to introduce a completely new point, for determination in the. Lastly, the application was filed after the trial has been commenced and part cross examination of P.W 1 was fixed. The purpose of amendment of written statement is not to fill up the lacuna by collecting evidence and the defendant failed to make out an appropriate case for proper adjudication of the suit. Therefore, this court is also of the view that the defendant/petition miserably failed to show his due diligence in filing the amendment application to incorporate those fact in the written statement and therefore this court find no reason to interfere with the order passed by the Learned Court for which any interference is necessary.

13. Hence, revisional application has no merit and thereby stands dismissed.

14. Urgent certified copy if applied by the parties to be provided at an earliest on compliance of other required formalities.

(CHAITALI CHATTERJEE DAS, J.)