

D/L - 309
18/06/2025
Court. No. 29
S.Kundu

C.O. 3771 of 2024
With
CAN 1 of 2025

Sambit Sinha
Vs.
Ahana Sarkar & Ors.

Mr. Dyutiman Banerjee
Mr. Vishal Mallick

...for the petitioner.

Md. Z. Rahaman

...for the opposite party.

In Re:- CAN 1 of 2025.

This is an application wherein petitioner has prayed for restoration of the original application being CO 3771 of 2024 in its original file after setting aside the order of dismissal dated 28.4.2025.

Having heard the learned counsel appearing for the petitioner and the opposite parties and also having gone through the grounds shown in the application for restoration, I find that the prayer is required to be allowed for the ends of justice and also considering the weighty consideration that a lis should be disposed of on merit as far as possible, rather than to shut its doors on technical grounds.

The application being CO 3771 of 2024 is restored in its original file with original number and the order of dismissal dated 28.04.2025 is recalled.

Accordingly, CAN 1 of 2025 is disposed of.

In Re:- CO 3771 of 2024.

This is an application wherein the petitioner has prayed for setting aside the order passed by the learned Civil Judge (Junior Division), 1st Court at Bolpur in Title Suit No. 74 of 2013.

By the order impugned, the learned Trial Court rejected the defendant's prayer for amendment of written statement.

The opposite parties herein being the plaintiffs filed the aforementioned suit for eviction and recovery of khas possession against petitioner herein. In the plaint, plaintiffs specifically stated that the defendant is a licensee and has got no right, title or interest in the property and for which he was served with notice of eviction by the plaintiff. The defendant filed his written statement and denied all material allegations made in the plaint.

The defence plea in the written statement is that the plaintiff has leased out the suit premises to him and his family members for their residential purpose on 30th March, 1994 by executing unregistered agreement for lease, for a period of 86 years after taking Rs.1,00,000/- by two instalments. By dint of such lease agreement the defendant is in possession of the suit property for long 17 years in the status of lessee and for which the suit for eviction is not maintainable.

I am informed that the suit has been posted for hearing argument after closure of evidence. I am also informed that said agreement for lease has already been marked as Exhibit before the Trial Court.

Now what is sought to be incorporated by way of amendment of written statement is that lease deed is binding upon the parties to the suit as it bears signature of both the parties and as such, the present suit shall be governed by the provision of West Bengal Premises Tenancy Act, 1997. Since the issue sought to be incorporated is purely question of law is not required to be incorporated in the pleading in terms of Order VI, Rule 2 read with Order VI, Rule 13 of CPC which makes it clear that pleading should state facts and not law and Rule 13 makes it clear that the facts which the law presumes in favour of a party or as to which the burden of proof lies upon the other side, need not be pleaded. As such the Trial Court rightly rejected the defendant's prayer for amendment of the written statement.

Moreover, the defendant did not assign any reason as to what prevented him to incorporate the same in the pleading before commencement of the trial, which is mandatory under the proviso to Order VI Rule 17 of the CPC.

In such view of the matter, CO 3771 of 2024 is dismissed. However, this dismissal order will not preclude the defendant to agitate such point what he

sought to be incorporated by way of amendment, at the time of argument.

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

(Dr. Ajoy Kumar Mukherjee, J.)