

D/L- 45
17/03/2025
Ct. No.-6
Aritra

C.O. 4383 of 2024

**Bireswar Dutt Estates Private Limited
Versus
Amit Banerjee**

Ms. Sreyanshi Majumdar
...for the petitioner

This application is at the instance of the plaintiff and is directed against an order being No.49 dated November 19, 2024 passed by the learned Judge, 4th Bench, Presidency Small Cause Court, Calcutta.

By the order impugned the application under Section 6, Rule 17 of the Code of Civil Procedure filed by the petitioner herein stood rejected.

The learned advocate appearing for the petitioner submits that the petitioner filed the application for amendment of plaint to correct the erroneous description in the schedule of the suit property. She submits that unless such error is rectified it will cause difficulty at the time of execution. In support of such contention the learned advocate appearing for the petitioner placed reliance upon a decision of the Hon'ble Supreme Court in **Sajjan Kumar vs. Ram Kishan** reported at **(2005) 13 SCC 89**. She further submits that it is well-settled that the tenant knows the extent of his tenancy and for such reasons the opposite party shall not be prejudiced in any manner if the amendment is allowed. In support of such

contention she placed reliance upon a decision of the Hon'ble Division Bench of this Court in **Global Exports Limited vs. Dalhousie Properties Limited**, reported at **(2017) 4 WBLR (Cal) 414**.

It has been stated in the plaint of Title Suit No.237 of 2014 that the defendant was a tenant under the plaintiff in respect of one room on the 2nd floor of the premise No.11B, Ramdhone Mitra Lane, Kolkata-700004. The suit property was specifically described in the schedule of the plaint wherefrom it appears that the suit property is one room on the 2nd floor of the premise No.11B, Ramdhone Mitra Lane, Kolkata-700004.

In the written statement the defendant/opposite party has stated that he is a tenant in respect of one room on the 2nd floor and another room on the 3rd floor of the suit building at a monthly rent of Rs.256/-. The written statement was filed on August 28, 2014.

It is not in dispute that the application for amendment of plaint was filed after the commencement of trial.

After going through the application for amendment of plaint this Court finds that it has been admitted by the DW 1 in the cross-examination that he is a tenant in respect of two rooms, one on the 2nd floor and one on the 3rd floor. The application for amendment was taken out only on January 10, 2023.

This Court fails to understand as to why the petitioner approached the learned Trial Judge with a prayer for amendment of the plaint at such a belated stage when the fact that the defendant was a tenant in respect of one room on the 2nd floor and another on the 3rd floor was clearly stated in the written statement which filed in the year 2014.

Proviso to Order 6 Rule 17 of the Code of Civil Procedure creates an embargo upon the Court in allowing the application for amendment after the commencement of trial. Since the petitioner was well-aware of the fact that the defendant is claiming to be a tenant in respect of two rooms as would be evident from the written statement filed sometimes in the year 2014, this Court is of the considered view that the petitioner failed to satisfy the Court as to why the application for amendment was not filed prior to the commencement of trial. That apart, the petitioner is trying to change the suit property by way of amendment which is impermissible. It is not the case of an erroneous description of the suit property but the petitioner is trying to enlarge the subject matter of the suit for eviction.

In **Sajjan Kumar (supra)** the amendment which was sought for to correct the erroneous description of the suit premises in the plaint. The said decision being distinguishable on facts cannot come to the aid of the petitioner.

The issue that fell for consideration in **Global Exports Limited (supra)** was whether a notice of evidence is bad in the absence of a clear description of the leasehold premises. It was held therein that the tenant is estopped from raising any dispute about the area or identity of the suit premises and a judgment debtor is liable to vacate the premise which was in enjoyment in lieu of rent.

The issue that arises for consideration in this civil revision application is whether an application for amendment should be allowed at such a belated stage.

For such reasons this Court is of the view that **Global Exports Limited (supra)** cannot also come to the aid of the petitioner.

Considering the fact that the petitioner is trying to enlarge the suit property and also that the prayer for amendment was a highly belated one as the same was filed after commencement of trial, this Court is not inclined to interfere with the order impugned. CO 4383 of 2024 stands dismissed.

There will be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)