

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

**Before:
THE HON'BLE JUSTICE OM NARAYAN RAI**

C.O. 1029 of 2026

Shri Raj Kumar Saraf

Vs

ShriPankajKedia

For the Petitioner : Ms. Sabita Mukherjee Roy Choudhury,
Ms. S. Singh.

For the Opposite Party : Mr. Debabrata Banerjee,
Mr. AnirbanSaha Roy.

Hearing Concluded on : 01.04.2026

Judgment on : 01.04.2026

Om Narayan Rai, J.:

1. This revisional application is directed against an order dated December 17, 2025 passed by the learned Judge, Bench VI, Presidency Small Causes Court at Calcutta whereby the opposite party's application for amendment of written

statement under Order 6 Rule 17 of the Code of Civil Procedure, 1908 has been allowed.

2. Learned advocate appearing for the petitioner submits that the subject application for amendment of written statement is the third in line at the instance of opposite party - tenant who is facing eviction proceedings. It is submitted that all the facts that were sought to be introduced in the written statement by way of amendment were clearly in the knowledge of the opposite party and no reason has been cited by the opposite party as to why such amendments were sought to be introduced at the fag end of the suit after closure of evidence when the suit was set down for arguments.

3. She has taken this Court through the depositions of the witnesses in the suit as well as the amended written statement of the opposite party to demonstrate that all the facts sought to be incorporated by way of amendment were well known to the defendant-opposite party way much earlier than the time the application was sought to be filed.

4. Learned advocate appearing for the opposite party submits that the application for amendment was necessitated in view of the fact that the events mentioned in the said application arose subsequent to the institution of the suit and the opposite party did not have knowledge thereof and as such the opposite party could not bring it on record by way of amendment earlier. He has handed upon to Court a copy of the order dated August 13, 2024 passed by the Learned Trial Court wherein factum of death of the son of the plaintiff has been recorded,

in support of his submission that such fact came to the knowledge of the opposite party only on August 13, 2024.

5. Heard learned advocates appearing for the respective parties and considered the materials on record.

6. The learned Trial Court has by the order impugned, allowed the application for amendment upon observing that the proposed amendments '*can be allowed for proper adjudication of the suit*'. The learned Trial Court has observed '*that the defendant is not attempting to bring on record any new facts, as plaintiff has inferred his prior knowledge about the same by stating that defendant knew about it from before*'.

7. It is not understood that if the facts sought to be introduced were not new and were known to the opposite party, then how could the same be permitted to be introduced in the written statement by the opposite party by way of amendment after the conclusion of the evidence, more so, when the learned Trial Court itself has at one place observed in the order impugned that '*defendant has not shown that despite due diligence, he could not bring such amendment earlier*'.

8. The opposite party has sought for introduction of the following amendments in the written statement.

"8(E) That during pendency of the suit, the wife and son of the Plaintiff had died and his three daughters out of which one is Central Government Employee and is staying permanently in Delhi and other two un-married daughters are residing at 5, Princeep Street, 3rd Floor, Kolkata.: 700 072 with the Plaintiff.

8(F) That the Plaintiff used to run his business at premises No. 11, NaliniSett Road, Kolkata: 700 007 and in the year of 2019, Plaintiff closed his business from 11, NaliniSett Road and handed over the said shop room to his land lord

Anil Agarwal in the year of 2020 but still the Plaintiff paying GST showing the business place 11, NaliniSett Road, Kolkata 700 007, suppressing the facts of closing business from 11, NaliniSett Road, Kolkata: 700007.

8(G) That after demise of his son and wife there is plenty of space of his building to run his business, as such, in the present cenirio, the written statement is required to amend as, the suit building is (G+3)-4 storied building and using for commercial as well as residential purpose and the plaintiff has own enough accommodation to run his business which has been suppressed and plaintiff is trying to made out his case that he is carrying on business at his rented at 11 NalaniSett Road, Kolkata : 700007.

8(H) That the Plaintiff intentionally and deliberately suppressed material fact that he has accommodation at the suit building which is G+3 storied brick building house having its 6 (six) big rooms and other small room in each floor and apart from the accommodation of another tenant namely "Minda Motor Company" remaining portion of the building under occupation of the plaintiffs and his others family members."

9. Insofar as the proposed amendment at serial no. 8(E) and of the schedule is concerned, it is noticved from the examination in chief of DW 2 (Shri Ramesh Kumar Kedia) at page 107 of the revisional, application that the opposite party was well in the know of such fact and had deposed to that extent. Such examination-in-chief was filed sometime in the year 2023.

10. As regards the proposed amendment at serial no. 8(F) and 8(G)above, it is noticed that the fact that the plaintiff had left the tenancy was also within the knowledge of the defendant-opposite party inasmuch as DW 5 (Mr. Anil Agarwal) during his cross-examination, had stated about the same. The said cross-examination was also done sometime in the year 2023 and such aspect would be evident from a reading of Order No. 141 dated May 22, 2025 (at page 62 of the revisional application). Moreover, the aspect of suppression of closure of business

is not relevant for determination of the issue of eviction of a tenant in the present suit.

11. Furthermore, knowledge about the same (i.e. proposed amendment indicated at serial nos. 8(F) and 8(G)) can also be sourced to the amendment carried out by the petitioner to its plaint, which would be evident from page 13 of the revisional application. Such facts had been introduced by way of amendment as far back as in the year 2013.

12. Insofar as the proposed amendment at serial no. 8(H) is concerned, the same is relatable to the document which has been exhibited before the Trial Court and has been marked as Exhibit 7 (at page 82 of the revisional application). It is noticed that upon the said document being exhibited, the opposite party had duly amended his written statement as far back as on April 12, 2022 (page 28 of the revisional application).

13. As regards the factum of death of the plaintiff's son even if the opposite party's submission is accepted at face value that the opposite party came to know about such death only from the recording in the order dated August 13, 2024 then also there is no explanation as to why was such fact was sought to be introduced only in May, 2025.

14. It is thus clear from the chain of events indicated hereinabove that the facts which were sought to be incorporated in the written statement by way of amendment were in the knowledge of the defendant at least in the year 2023-2024, yet, the application for amendment was filed only on May 25, 2025. The application for amendment does not indicate any reason as to why such

amendments were sought to be made so late and why the same had to wait till the conclusion of evidence.

15. The learned Trial Court has evidently not been satisfied with the due diligence of the opposite party. In such view of the matter, it was not open to the learned Trial Court to allow such amendment at such a belated stage despite having found that the defendant was lacking in due diligence and that defendant had knowledge of the events which were sought to be introduced by way of amendment.

16. Although it is settled law that amendments which are necessary for proper adjudication and determination of the issues in suit must be allowed, it is equally settled that amendments which lack *bona fide* and which are aimed at delaying and undue-protraction of proceedings, should be nipped in the bud. In the case at hand the ejectment suit has been pending since 2010. In such view of the matter, it was not appropriate for the learned Trial Court to allow such an amendment so lightly.

17. For all the reasons aforesaid, the order dated December 17, 2025 is set aside.

18. Accordingly, C.O. 1029 of 2026 stands disposed of.

19. There shall be no order as to costs.

20. At this juncture learned advocate appearing for the petitioner seeks liberty to withdraw the costs that have been put in by the opposite party in terms of the order impugned. The petitioner shall be at liberty to file appropriate application seeking withdrawal of the costs put in, in terms of the order impugned dated

December 17, 2025. If such application is made, the learned Trial Court shall consider such application and pass appropriate orders in accordance with law.

21. Attention of this is drawn to an order dated November 22, 2022 whereby the learned Trial Court had been requested by this Court to ensure expeditious disposal of the ejectment suit, preferably before the end of 2023. In such view of the matter, the learned Trial Court is requested to dispose the ejectment suit along with interlocutory applications, if any, in terms of the request already made by this Court as expeditiously as possible and preferably within a period of six months from the next date fixed so as to ensure that the petitioner is not required to approach this Court again with a prayer for expeditious disposal.

(Om Narayan Rai, J.)

SG.A.R(Ct.)