

C.O. 1987 of 2026

Habibar Mallick
-versus-
Sri Sandip Ghosh

Mr. Sk. Abu Abbasuddin
... for the petitioner

Mr. Arup Krishna Das
Mr. Rajarshi Ghosh
..for the opposite party

This application under Article 227 of the Constitution of India is at the instant of the plaintiff and is directed against an order being no. 46 dated 4th June, 2026 passed by the learned Civil Judge (Junior Division), 3rd Court, Serampore in Title Suit No. 122 of 2020.

By the order impugned the application for amendment of the written statement was allowed subject to payment of cost of Rs. 1,000/- to be paid by the opposite party to the petitioner.

The petitioner filed a suit for eviction against the opposite party herein. In the written statement the defendant has stated that there was no relationship of landlord and tenant between the petitioner and the opposite party. In the additional written statement the stand of the opposite party was same. After the closure of evidence of the plaintiff and on the date fixed for evidence

of the defendant's witness, the opposite party filed an application under Order 6 Rule 17 of the Code of Civil Procedure for incorporating certain facts in the written statement. Such prayer was allowed by the impugned order. Being aggrieved the plaintiff has approached this Court.

The learned advocate appearing for the petitioner submits that the learned trial judge without considering the fact that the opposite party is trying to change the line of defence has allowed the prayer for amendment. He further submits that the opposite party failed to satisfy the due diligence test under the proviso to Order 6 Rule 17 of the Code of Civil Procedure.

The learned advocate appearing for the opposite party seriously disputes the submission of the learned advocate for the petitioner. He submits that the defendant/opposite party only sought to elaborate the defence case already made by the opposite party in the written statement and the additional written statement. He places reliance upon a decision of the Hon'ble Supreme Court in the case of State of Bihar and others versus Modern Tent House and another reported at AIR 2017 SC 4966 in support of the aforesaid contention.

After going through the order impugned, this Court finds that the learned trial judge specifically recorded that the defendant has not explained any reasonable ground for failure to incorporate the facts sought to be included

by way of amendment at the time of filing of the written statement.

It is not in dispute that the court has the power to allow amendment if the same is necessary for the purpose of deciding the real controversies between the parties. Proviso thereto however curtails the power of the court to exercise discretion in favour of the applicant who seeks amendment of pleading if such application for amendment has been filed after the commencement of trial without any satisfactory reason as to why the applicant was prevented by sufficient cause for not filing the amendment application prior to the commencement of trial.

After going through the application for amendment, this Court finds that the petitioner has put the blame on the previous learned advocate for not filing the amendment application prior to commencement of trial. Such an explanation is not acceptable to this Court.

The learned trial judge has specifically recorded that the opposite party failed to satisfy the due diligence test under proviso to Order 6 Rule 17 of the Code of Civil Procedure.

That apart it is the specific stand of the opposite party in the written statement and the additional written statement that there was no relationship of landlord and tenant between the petitioner and the opposite party. However by way of the proposed amendment the opposite party sought to make out a case that Angur Bala Ghosh

(Pisima of the defendant) who was the wife of the donor of the gift deed in favour of the plaintiff/petitioner allowed the opposite party to occupy the premises as a licensee under her. Such case was not made out in the written statement. Thus the opposite party sought to change the line of defence by way of amendment, which is not permissible under the law.

The learned trial judge without making any attempt to ascertain as to how the proposed amendment would be necessary for the purpose of deciding the real controversies between the parties allowed the prayer for amendment only on the ground that the same, if allowed, would not cause any injustice to the plaintiff. This Court fails to understand as to what prompted the learned trial judge to make such observation when the application for amendment was filed after the closure of the evidence of the plaintiff and that too by changing the line of defence.

For such reasons, this Court is inclined to interfere with the order impugned.

There is no quarrel to the proposition of law laid down by the Hon'ble Supreme Court in *Modern Tent House* (supra) that an amendment seeking to elaborate the facts originally pleaded in the written statement can be allowed. However, such is not the case which is under consideration. It has also been stated in the said decision that the amendment should not be allowed to introduce any defence compared to what has originally been pleaded

in the written statement. Thus the aforesaid decision of the Hon'ble Supreme Court does not come to the aid of the opposite party but it supports the case of the petitioner.

For such reason, the impugned order is set aside.

The civil revisional application stands allowed. The application for amendment of the written statement stands rejected.

The learned trial judge is directed to proceed with the suit in the light of the observations made by this Court.

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.)