

09.6.2026
Ct. no. 6
S/L.7
Samarpita

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
(Appellate Side)

C.O. 2591 of 2025

**Samarendra Nath Ghosh @
Samarendra Ghosh
-Vs-
Smt. Swapna Ghosh & Anr.**

Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
Mr. Abhirup Halder,
Mr. Anirban Saha Roy,
Ms. Bipasha Bhattacharyya
...for the petitioner.

Mr. Dyutiman Banerjee,
Mr. Debjit Dutta
... for the Opposite Parties

1. This revisional application is directed against orders dated March 10, 2025 and July 1, 2025 passed by the learned Civil Judge (Junior Division) 3rd Court, Serampore, District- Hooghly, in Title Suit No. 239 of 2013.
2. By the order dated March 10, 2025, while allowing the petitioner's application for amendment of written statement, the learned Trial Court granted liberty to the plaintiffs to file "Affidavit-in-Reply" against the amended written statement. By the order dated July 1, 2025, the learned Trial Court accepted the rejoinder to the amended written statement

filed by the opposite parties upon payment of costs of Rs. 600 (Rupees Six Hundred).

3. Title Suit No. 239 of 2013, has been instituted by the opposite parties praying *inter alia* for a decree of recovery of possession and damages. In the said suit, the petitioner filed an application for amendment of the written statement. Such application was allowed by an order dated March 10, 2025. By the same order, the opposite parties were granted liberty to file "Affidavit-in-Reply" to the amended written statement by April 9, 2025. On April 9, 2025 the opposite parties failed to file the Affidavit-in-Reply as directed by the order dated March 10, 2025. Accordingly, it was observed that the opposite parties stood debarred from filing any Affidavit-in-Reply against the amended written statement.
4. Subsequently, the opposite parties filed an application praying for acceptance of a rejoinder filed by them to the amended written statement while asserting that they could not file the rejoinder timely, since a copy of the amended written statement had been served upon them belatedly. The learned Trial Court allowed such application by an order dated July 1, 2025, subject to

payment of costs of Rs. 600 (Rupees Six Hundred).

5. Being aggrieved by both the aforesaid orders, the petitioner has approached this Court by filing the present revisional application.
6. Mr. Sounak Bhattacharya, learned advocate appearing for the petitioner submits that, a reading of the provisions of Order VIII Rule 9 of the Code of Civil Procedure, 1908 would indicate that subsequent pleadings can only be filed in the nature of additional written statement and there is no provision for permitting the plaintiffs to file Affidavit-in-Reply to the written statement. It is submitted that, the latter portion of Order VIII Rule 9 would also indicate that, the Court at any time may require "*a written statement or additional written statement from any of the parties*".
7. Mr. Dyutiman Banerjee, learned advocate appearing for the opposite parties submits that, the learned Trial Court has passed this order in the peculiar facts of the case, since the petitioner/defendant was allowed to amend his written statement after the trial had commenced. It is submitted that, in such a situation, the learned Trial Court thought it proper to allow the petitioner to file Affidavit-

in-Reply to the amended written statement.

He further submits that the opposite parties could not avail of the opportunity to file Affidavit-in-Reply, since the amended written statement was served upon them belatedly.

8. Heard learned advocates appearing for the respective parties and considered the material on record.

9. The expression “pleading” has been defined under Order VI Rule 1 of the Code to mean to plaint or written statement.

10. The only provision in the Code that contemplates additional or subsequent pleadings can be found in Order VIII Rule 9 of the Code which reads as follows:

“Subsequent pleadings. - No leading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties cut and fix a time of not more than thirty days for presenting the same.

11. A plain cumulative reading of the two provisions would indicate that there is no provision in the Code whereunder Affidavit-in-Reply or a rejoinder to a written statement

can be filed. If at all a plaintiff feels there is need to supplement its pleadings or to incorporate a further prop in its plaint case, the plaintiff would have to avail the provision of amendment of pleadings under Order VI Rule 17 of the Code.

12. In such view of the matter, the order dated March 10, 2025, to the extent it granted time to the opposite parties to file Affidavit-in-Reply to the amended written statement cannot be said to be proper. Furthermore, once the learned Trial Court debarred the opposite parties from filing Affidavit-in-Reply by the order dated April 9, 2025, the learned Trial Court could not have allowed them the opportunity to file rejoinder upon payment of costs without first recalling the order dated April 9, 2025, whereby, the debarment of the opposite parties from filing Affidavit-in-Reply was recorded.

13. In such view of the matter, the order dated July 1, 2025 cannot be sustained.

14. For all the reasons aforesaid the order dated March 10, 2025, to the extent it allowed the opposite parties time to file Affidavit-in-Reply and the order dated July 1, 2025, to the extent it granted the opposite parties' prayer for acceptance of rejoinder to

the amended written statement on payment of costs is set aside. It is however, clarified that this order shall not prevent the opposite parties from taking steps for amendment of plaint in accordance with law. Needless to mention that the aforesaid observation would not mean a passport for allowing the application for amendment, if such application is filed inasmuch as the same would have to be tested on the anvil of Order VI Rule 17 of the Code.

15. With the aforesaid observation, **C.O. 2591 of 2025** stands disposed of. No costs.
16. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Om Narayan Rai, J.)