

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR

C.O No. 3204 of 2025

Smt. Tilottama Roy

vs.

Sri Ashok Ghosh and Ors.

For the Petitioner	: Mr. Prantick Ghosh, Adv. : Mr. Prasad Bhattacharyya, Adv. : Ms. Poulami Saha, Adv. : Ms. Sravani Ghosh, Adv.
For the O.P Nos. 2 & 3	: Mr. Uttiya Ray, Adv. : Mr. Sardar Shahin Imam, Adv. : Ms. Rubina Akhtar, Adv. : Mr. Atish Santra, Adv.
For the O.P Nos. 7 & 8	: Mr. Aniruddha Chatterjee, Sr. Adv. : Mr. Ashis Kumar Dutta, Adv.
Judgment reserved on	: 25.02.2026
Judgment pronounced on	: 18.03.2026
Judgment uploaded on	: 18.03.2026

Shampa Sarkar, J.

1. All the opposite parties had been served. The Affidavit of service was on record. The opposite parties Nos. 2 and 3 (defendant Nos 2a and 2b), the opposite parties Nos. 7 and 8 (defendant Nos 5 and 6) filed written objections to the application for amendment. The trial court recorded that the defendant/opposite No.1 adopted the contentions of the

plaintiff. The suit was proceeding exparte against the defendant No. 4(b)/opposite party No.6. The opposite party No.4 and 5 did not file any written objection. Thus, the opposite parties who filed their written objections to the amendment application are before this court to contest the proceeding.

2. This revisional application arises out of an order dated August 5, 2025 passed by the learned Civil Judge (Jr. Divn.) 3rd Court, Howrah in Title Suit No. 302 of 2012. By the order impugned, the learned court rejected an application under Order VI Rule 17 of the Code of Civil Procedure filed by the petitioner/plaintiff. The plaintiff sought to amend the plaint and incorporate certain paragraphs and a prayer with regard to a Deed of Revocation.

3. The learned court was of the view that the Deed of Revocation which was sought to be brought on record by way of amendment of the pleadings, was itself not valid. The same was executed contrary to the provisions of Section 126 of the Transfer of Property Act, 1882. When the Deed of Revocation was not a legal document, incorporation of the contents thereof by way of an amendment was not necessary for proper adjudication of the dispute between the parties.

4. Moreover, as the plaintiff's case was that the impugned Deed of Gift, had been executed by practising misrepresentation and forgery by the defendant no. 1, there could not be any cause for revocation of the said deed. Incorporation of the factum of revocation would not help to determine the real question in controversy between the parties. The

learned court relied on various decisions of the Hon'ble Apex Court and also of this court in support of the reasons behind the rejection of the application.

5. The suit was filed for declaration and injunction. The prayers were for a decree of declaration that the Deed of Gift bearing no. 10387 dated December 14, 2012, described in Schedule-B was illegal, void ab initio and not binding on the plaintiff. A further prayer was for a decree of declaration that the plaintiff was the owner of the Schedule-A property and that the impugned Deeds of Sale described in Schedules C(i), C(ii), C(iii), C(iv) were nothing but paper transactions, and the same were not binding upon the plaintiff.

6. The case pleaded in the plaint indicate that the plaintiff/petitioner was a co-sharer of the property to the extent of 8 annas, upon death of Pratap Singha Roy, her husband. Pratap and Prahallad Chandra Singha were the joint owners of the suit property, but they were enjoying their individual portions. A partition suit was filed by the petitioner against Prahallad, which was decreed in preliminary form. 8 annas share of the petitioner was declared. A partition commissioner was appointed and the shares had been demarcated. As, the petitioner could not look after the suit, she decided to appoint the defendant No.1 as her constituted attorney. The petitioner was a domestic help in the house of the defendant No.1 and she trusted him. The defendant no. 1 thereafter took her LTI on some blank papers. The defendant No.1 took the plaintiff to the Registry Office and got her to sign a document on the understanding

that, the signatures were being obtained on the Power of Attorney, sought to be executed and registered in favour of the defendant No.1, so that he could take after the litigation. The suit was amicably settled between the petitioner and heirs of Prahallad. It was alleged that, the defendant No.1, procured the alleged Deed of Gift in his favour by fraud and misrepresentation. The Deed of Gift was a manufactured document, thus, illegal and void in law. The said fact came to the knowledge of the petitioner, when she informed the defendant no. 1 that she wanted to sell the property. Hence, the suit was filed and prayer for cancellation of the Deed of gift was made. The plaint was amended earlier and paragraphs 23(a) and (b) were incorporated, when the plaintiff came to know of further sale. By such amendment, the defendant Nos. 2 to 6 were impleaded as parties. Prayers were also incorporated to the effect that the Deeds of Sale under Schedule C(i), C(ii), C(iii) and C(iv) were nothing, but paper transactions and not binding on the plaintiff.

7. Learned Advocate for the plaintiff/petitioner submits that, at the time of cross examination of the DW1, it was detected that due to bona fide mistake and inadvertence, the facts with regard to revocation of the deed of gift, upon registration of the Deed of Revocation on February 13, 2013, had not been brought on record. Incorporation of such fact would not change the nature and character of the suit. The Deed of Revocation was relevant for the proper adjudication of the dispute between the parties, inasmuch as, during the pendency of the suit, several sales had taken place of the self-same suit property, to the added defendants.

8. The petitioner's case was that, the Deed of Gift was a forged one and procured and manufactured by the defendant no. 1, by misrepresenting and/or misleading the petitioner. That was why the petitioner prayed for cancellation of the Deed of Gift and had revoked the same. The Court held that, the fact of execution of the Deed of Revocation was within the knowledge of the petitioner since 2013. The onus was upon the petitioner to establish before the court that despite due diligence, the said deed could not be produced at the appropriate stage and necessary pleadings could not be incorporated.

9. The Court held that, as per the plaint case the Deed of Gift was a product of forgery and fraud practised upon the plaintiff by the defendant no. 1. Thus, the issue of revocation was irrelevant. The plaintiff had to prove the plaint case. If the plaintiff was successful, the Deed of Gift would automatically would stand cancelled.

10. Mr. Aniruddha Chatterjee learned Senior Advocate for the opposite parties Nos. 7 and 8 and Mr. Uttiya Ray learned Advocate for the opposite parties Nos. 2 and 3, vehemently oppose such prayer for amendment on the ground that the amendment was barred by constructive res judicata. The said amendments were not incorporated in the earlier amendment application. No such prayer was made. That the amendment was malafide and violative of the proviso to Order 6 Rule 17 of the Code of Civil Procedure.

11. In my view, although a detailed explanation as to the reasons for the delay in bringing such fact on record by way of an amendment,

had not been provided, but the plaintiff/petitioner had stated that due to bona fide mistake and inadvertence on her part, the factum of revocation of the deed of gift could not be brought on record at an earlier stage.

12. The plaintiff/petitioner is an uneducated and under privileged widow, who worked as a domestic help in the house of the defendant No.1. The allegation is that her employer had perpetuated fraud and manufactured the Deed of Gift. She had to rely on the advice of her Advocates. The plaintiff filed the suit for a declaration that the Deed of Gift was a creature of fraud, misrepresentation and forgery. The defendant No.1 had sold the property to third parties. The revocation is a later event, which was not brought on record on an earlier occasion. However, allowing the amendment will not change the nature and character of the suit. To fortify the plaint case, the petitioner wants to strengthen her pleadings by seeking to establish that she had also revoked the Deed of Gift as well. The amendment will not amount to taking away any admission in the plaint case. It is not that the plaintiff wanted to set up contrary pleas. Thus, only for the delay in filing the amendment application, the amendment should not be rejected. The defendants can be compensated with cost.

13. Moreover, the learned court erred in holding that the Deed Of Revocation was invalid, as it did not comply with the provisions of section 126 of the Transfer of Property Act. First and foremost, the learned court should not have gone into the validity of the Deed of Revocation. The legal consequences of the said revocation should be

decided at the final stage of the suit. Moreover, section 126 of the Transfer of Property Act, provides that a gift may also be revoked under the same conditions in which a contract can be rescinded. In this case, the Deed of Gift has been challenged on the ground of fraud, undue influence and misrepresentation. Whether the prayer for a declaration that the Deed of Revocation being binding on the parties was time barred or not, will be a matter of evidence. The cause of action would arise from the date of denial of the Deed of Revocation by the parties sought to be bound by the said deed. I hold that the merits of the amendment should not have been looked into. In the matter of **Andhra Bank vs. ABN Amro Bank N.V. and Ors.**, reported in **(2007) 6 SCC 167**, the Hon'ble Apex Court held as follows:-

5. We have heard Mr Rohit Kapadia, learned Senior Counsel appearing for the appellant and Mr S. Ganesh, learned Senior Counsel for the respondent. We have perused the original written statement as well as the application for amendment of the written statement. After going through the written statement and the application for amendment of the written statement, we are of the view that the amendment sought to be introduced by the appellant must be allowed. From a perusal of the impugned order of the Special Court we find basically that two grounds have been taken by the Special Court for rejecting the prayer for amendment of the written statement. The first ground is that considerable delay has been caused by the appellant in filing the application for amendment of the written statement. It is well settled that delay is no ground for refusal of prayer for amendment. Mr Ganesh, appearing for ABN AMRO Bank submits before us that by filing of such an application for amendment of the written statement which has been filed with long delay, the appellant sought to stall the hearing of the suit which has been fixed on 13-7-2007. In response to this Mr Kapadia, learned counsel for the appellant, submits that in the event the prayer for amendment is allowed by us his client undertakes to file the amended written statement by day after tomorrow i.e. 12-7-2007 before the

Special Court. Since, we are of the view that delay is no ground for not allowing the prayer for amendment of the written statement and in view of the submissions made by Mr Kapadia, we do not think that delay in filing the application for amendment of the written statement can stand in the way of allowing the prayer for amendment of the written statement. So far as the second ground is concerned, we are also of the view that while allowing an application for amendment of the pleadings, the Court cannot go into the question of merit of such amendment. The only question at the time of considering the amendment of the pleadings would be whether such amendment would be necessary for decision of the real controversy between the parties in the suit. From a perusal of the amendment application we find that the appellant in its prayer for amendment has only taken an additional defence that in view of Section 230 of the Contract Act, the suit itself is not maintainable. It is well settled, as noted herein earlier, that at the time of considering the prayer for amendment of the written statement it would not be open to the Court to go into the fact whether in fact the suit in view of Section 230 of the Contract Act was or is not maintainable.

14. The amendment will not cause any injustice to the defendants.

Moreover, the Order VI Rule 17 of the Code, was incorporated to curtail inordinate delay in the disposal of the suit, but it cannot operate as an absolute bar. Moreover, the petitioner as plaintiff would not intentionally delay her own suit.

15. The relevant decisions on amendment of pleadings are discussed below:-

16. In ***North Eastern Railway Administration, Gorakhpur v. Bhagwan Das*** reported in ***(2008) 8 SCC 511***, it was held as under:

“16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In ***Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil [AIR 1957 SC 363]*** which still holds the field, it was held that all amendments

ought to be allowed which satisfy the two conditions : (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. [Also see **Gajanan Jaikishan Joshi v. Prabhakar Mohanlal Kalwar (1990) 1 SCC 166.**]

17. In **Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. & Anr.** reported in **2022 SCC Online SC 1128**, after considering numerous precedents with regard to amendment of pleadings, the Hon'ble Apex Court culled out certain principles:-

- (i) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.
- (ii) In the following scenario such applications should be ordinarily allowed if the amendment is for effective and proper adjudication of the controversy between the parties to avoid multiplicity of proceedings, provided it does not result in injustice to the other side.
- (iii) Amendments, while generally should be allowed, the same should be disallowed if –
 - (a) By the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side.
 - (b) The amendment does not raise a time-barred claim, resulting in the divesting of the other side of a valuable accrued right (in certain situations)
 - (c) The amendment completely changes the nature of the suit;
 - (d) The prayer for amendment is malafide,
 - (e) By the amendment, the other side should not lose a valid defence.
- (iv) Some general principles to be kept in mind are –
 - (I) The court should avoid a hyper-technical approach; ordinarily be liberal, especially when the opposite party can be compensated by costs.
 - (II) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint or introduce an additional or a new approach.

(III) The amendment should not change the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint.

18. In the matter of ***Dinesh Goyal @ Pappu vs Suman Agarwal (Bindal) and Ors.*** reported in **2024 INSC 726**, the Hon'ble Apex Court held as follows:-

“12. The question that we have to consider, in the above backdrop is whether the High Court fell in error in allowing the application seeking leave to amend pleadings, in contravention of the statutory language.

13. By way of the amendment, what is sought to be done is, to question the validity of the Will, on the basis of which, the defendant sought to have the suit dismissed, while also expanding the scope of adjudication of the suit to include movable property. It has to be then, demonstrated that – (a) determination of the genuineness of the Will is the necessary course of action in determining the issues inter se the parties; and (b) given the finding of the court below that the application was presented post the commencement of the trial, it could not have been, despite due diligence, presented prior to such commencement.

14. Be that as it may, the overarching Rule is that a liberal approach is to be adopted in consideration of such applications. [See also: ***Life Insurance Corporation of India vs Sanjeev Builders Pvt. Ltd. and Anr.*** reported in **2022 SCC Online SC 1128**; ***Rakesh Kumar Agarwal v. Rajmala Exports Pvt. Ltd.*** reported in **(2012) 5 SCC 337** ; ***Usha Balasaheb Swami & Ors. v. Kiran Appaso Swami & Ors.*** reported in **(2007) 5 SCC 602** ; ***B.K. Narayana Pillai v. Parmeswaran Pillai & Anr.*** reported in **(2000) 1 SCC 712**

19. In ***Rajesh Kumar Aggarwal & Ors. Vs. K.K. Modi & Ors.*** reported in **(2006) 4 SCC 385**. The Hon'ble Apex Court had the occasion to consider and interpret Order VI Rule 17 of the Code of Civil Procedure. Paragraphs 15 and 16 is quoted below:-

“15. The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the

parties provided it does not cause injustice or prejudice to the other side.

16. Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.”

20. In the decision of ***Chander Kanta Bansal Vs. Rajinder Singh Anand***, reported in **(2008) 5 SCC 117** the Hon’ble Apex Court has noted the object and purpose of amendment made in 2002. In Para 13, following has been held:-

“13. The entire object of the said amendment is to stall filing of applications for amending a pleading subsequent to the commencement of trial, to avoid surprises and the parties had sufficient knowledge of the other’s case. It also helps in checking the delays in filing the applications. Once, the trial commences on the known pleas, it will be very difficult for any side to reconcile. In spite of the same, an exception is made in the newly inserted proviso where it is shown that in spite of due diligence, he could not raise a plea, it is for the court to consider the same. Therefore, it is not a complete bar nor shuts out entertaining of any later application. As stated earlier, the reason for adding proviso is to curtail delay and expedite hearing of cases.”

21. In the case of ***Mahila Ramkali Devi & Ors. Vs. Nandram (Dead) through Legal Representatives & Ors.***, reported in **(2015) 13 SCC 132** the Hon’ble Apex Court has again reiterated the basic principles, which are to be kept in mind while considering such applications in Paragraphs 20, 21 and 22, which is quoted as below:-

“20. It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting mala fide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.

21. In our view, since the appellant sought amendment in Para 3 of the original plaint, the High Court ought not to have rejected the application.

22. In Jai Jai Ram Manohar Lal v. National Building Material Supply, this Court held that the power to grant amendment to pleadings is intended to serve the needs of justice and is not governed by any such narrow or technical limitations.”

22. Thus, the amendment is allowed upon imposition of cost of Rs. 15,000/- in favour of the defendants. The cost will be deposited in the trial court within a period of 4 weeks from date. The contesting defendants will share the same in equal proportion. The amended plaint shall be filed within 4 weeks from date. In the event the cost is deposited, the amended plaint shall be accepted by the learned trial court and the defendants shall be at liberty to file their additional written statement within the period to be fixed by the Court. If necessary, the parties may also be allowed to lead evidence on the basis of the facts brought on record by the amendment.

23. The revisional application is accordingly disposed of.

24. The order impugned is set aside.

Urgent Photostat certified copies, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(Shampa Sarkar, J.)