

JPD-10
Ct No.07
12.06.2026
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CO 220 of 2025
IA No: CAN 1 of 2026

Chakra Roy and another
Vs.
Smt. Shantilata Roy and others

Mr. Bhaskar Roy Mahasaya,
Ms. Taniya Bhowmik

.... for the petitioners

Mr. Partha Bhowmick,
Mr. Abir Biswas

....for the opposite party nos. 6-9

1. The plaintiffs/petitioners have preferred the instant revisional application against an order whereby the application filed by the plaintiffs/petitioners for amendment of their plaint, after commencement of trial in a partition suit was dismissed.
2. Learned counsel for the petitioners argues that the petitioners came to know about the facts sought to be incorporated by way of amendment from the cross-examination of the defendant's witness. Learned counsel relies on a certified copy of the said cross-examination as well as a contemporaneous petition dated May 17, 2025, filed on the very date of such cross-examination, to argue that in such application it was categorically

stated that during cross-examination of D.W.1, the plaintiffs came to learn about the facts sought to be incorporated, that is, the defendant no.7 has transferred his share in favour of one Prasadi Rani Biswas and exhausted his share totally in the suit property.

3. Learned counsel takes the Court through the said application as well as the certified copy of the cross-examination.
4. Learned counsel for the defendants/opposite parties controverts such submission and argues that a belated amendment application, post-commencement of trial, even if to be allowed, has to contain sufficient reasons for the delay and has to satisfy the conscience of the Court as to due diligence of the parties seeking to amend. In the present case, it is argued that no such explanation was furnished in the application for amendment.
5. A perusal of the amendment application-in-question shows that the plaintiffs/petitioners, casually, merely stated in paragraph no.4 of the said application that they came to learn of the facts sought to be incorporated. In paragraph no.3 of the said application, it is also stated that new facts are necessary for the purpose of determining the real question in controversy between the parties and for “proper redressal” of the suit.

6. However, not a single sentence has been devoted to the exact reason as to why the plaintiffs could not introduce such pleadings at the inception and/or as to how and when they came to learn about the facts sought to be incorporated in the plaint by amendment.
7. Within the four corners of the cross-examination of D.W.1, there is no whisper of the suit property or the share of the defendant no.7 having been transferred to any third party.
8. In the application of even date, the plaintiffs/petitioners merely stated that during cross-examination of D.W.1, the plaintiffs came to learn that defendant no.7 has transferred his share in favour of Prasadi Rani Biswas and exhausted his share totally from the suit property and that Prasadi Rani Biswas transferred her share in favour of Dilip Chandra Biswas, which statement is belied by the cross-examination itself, as recorded in the Trial Court.
9. Learned counsel for the petitioners, for the first time before this Court, submits that although such statements were actually made by D.W.1 during cross-examination, those were not recorded by the Court since those were beyond the pleadings of the parties. It is also submitted by the petitioners that for the said purpose only, the proposed amendments are required to be incorporated in the

plaint in order to permit the evidence to be adduced thereon, which would drastically change the shares of the parties.

10. However, neither in the amendment application, which does not contain any explanation whatsoever for the delay, nor in the application for adjournment dated May 17, 2025, is there any mention of the purported turn of events that despite the statements-in-question being made by the D.W.1, those were not incorporated in his cross-examination since those were beyond the pleadings. In the application dated May 17, 2025, it is merely stated that during cross-examination of D.W.1, the plaintiffs came to learn of the said facts, which is not borne out, however, by the cross-examination itself. Thus, the argument of the petitioners at this stage for the first time regarding such statements having actually been made and having been the source of knowledge of the plaintiffs is not credible.
11. The language of the proviso to Order VI Rule 17 of the Code of Civil Procedure is couched in a negative manner, thus precluding any amendment to be allowed after the trial has commenced, with the specific exception that the Court has to come to the conclusion, for allowing such amendment, that in spite of due diligence, the party seeking

amendment could not have raised the matter before commencement of trial.

12. In the present case, the said condition has not been fulfilled by the plaintiffs/petitioners and, as such, the learned Trial Judge rightly turned down the prayer for amendment.
13. Although the petitioners might have a point in arguing that if the amendments are otherwise necessary for the purpose of determining the real questions in controversy between the parties, those may be permitted to be introduced even if due diligence is not pleaded; however, such argument would be germane only in the event the application for amendment was filed prior to commencement of trial.
14. After the proviso to Order VI Rule 17 being incorporated by the 2002 amendment of the Code of Civil Procedure, there is no scope of making such arguments if the amendment application is filed post-commencement of trial.
15. Thus, this Court does not find any merit in the revisional application.
16. Accordingly, CO 220 of 2025 is dismissed on contest without any order as to costs, thereby affirming the impugned order, bearing Order No. 57 dated November 07, 2025 passed by the learned Civil Judge (Senior Division), Sadar Court at Jalpaiguri in Title Suit No. 68 of 2017.

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

(Sabyasachi Bhattacharyya, J.)