

C.O No. 256 of 2015  
REPORTABLE

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

**APPELLATE SIDE**

Present:-

**The Hon'ble Justice Chaitali Chatterjee Das**

**C.O. 256 of 2015**

**With**

**I.A. No. CAN 4 of 2024**

**Dipak Kumar Shaw & ors.**

**Versus**

**Smt. Uma Shaw & ors.**

For the petitioners : Mr. Dhiraj Trivedi  
: Mr. Bikash Kr. Singh.

For the Opposite Party : Mr. Kasinath De.  
no 2:

Heard on : 05.03.2025

Judgement on : 11.03.2025

**Chaitali Chatterjee Das, J :-**

1. The instant application under Article 227 of the Constitution of India has been taken out challenging an order dated November 14, 2014 passed by the Learned Judge 13th Bench City Civil Court at Calcutta in Title suit no 386 of 1987 in connection with an application under Order VI Rule 17 of the Code of Civil Procedure filed by the plaintiff/Opposite Party.

2. Fact of the case assailed before this court by the Learned Senior Advocate of the petitioner is that vide registered deed of conveyance executed on different dates, they purchased the shop rooms situated in the ground floor of premises no 158, Lenin Sarani P.S. Bowbazar, Calcutta 700013 from the predecessor of the erstwhile owner of the Opposite Parties herein.

3. Prior to purchase of the said shop room they were kept in dark about any pending litigation between the proforma Opposite Party and the present petitioner and only came to know about such litigation when a Receiver as appointed by the trial Court came to the shop room of the petitioners and informed about the pendency of the title suit no 396 of 1987 filed by Om Prakash Shaw @ Jaiswal (since deceased) against the proforma Opposite Party for declaration and meant profit. He further came to know that the prayers

made in the said suit was for a declaration that the prayers in the said suit was for a declaration that the business in the name and style of M/s. Harmonics carried on in the same shop room is part of the partnership business namely M/s. Pioneer Engineering Company where the present Opposite Party has got 5% share and he is entitled to accounts profit, losses assets of the said business along with the profits, losses and assets of Pioneer Engineer Company since dissolved with effect from 31.11.1986. The further prayer of the plaint was for declaration that the original defendant that is the erstwhile owner of the shop room is entitled to carry on business in the name and style of Harmonics in the same shop room and deal in some consumer goods and other goods of Pioneer Engineering Company of premises no 158, Lenin Sarani, Calcutta 700013.

**4.** The plaintiff also prayed for declaration that the partnership under the name and style of Pioneer Engineering Company at 158 A, Lenin Sarani, Calcutta 700013, stood dissolved on and from 30.11.86.

**5.** The petitioner on being aware of the proceeding made an application under order 1 Rule 10 (2) of the Code of Civil Procedure before the Learned Court below for being added as a party dependant in the above suit on February, 19,

2004 and the said prayer was allowed Vide Order dated July 14, 2005. Accordingly the petitioners were added as defendants in the said suit.

**6.** The plaintiff being the Opposite Parties herein thereafter took out an application under Order VI Rule 17 of the Code of Civil Procedure for amendment of the plaint. In course of pendency of such application the original plaintiff died and an application for substitute the legal heirs was filed and accordingly the present Opposite Parties were substituted who filed the amended plaint without serving any copy to the petitioners. The first application filed under this Order VI Rule 17 Code of Civil Procedure was fixed for hearing and was withdrawn followed by subsequent application under Order VI Rule 17 of the Code of Civil Procedure with a schedule of proposed amendment against the petitioners which prima facie introduced a new case and would change the nature and character of the suit.

**7.** Mr. Dhiraj Trivedi the learned Advocate of the petitioner draws the attention of this court to the prayers made in the application under Order VI Rule 17 and the proposed schedule of amendment. Where plaintiffs/Opposite Parties prayed for;

- a) a decree of recovery of possession of M/s. Pioneer Engineering Company at premises no 158 Dharmatala (also known as 158, Lenin Sarani, P.S-Bowbazar, Kolkata) as per schedule of property given there in, from the added defendant.
- b) a decree of damages passed by the defendant /Petitioner for their wrongful action of their schedule property as trespasser, and Rs. 800 per day till recovery of khas possession of the said pendency of said M/s. Pioneer Engineering Company.

**8.** The submissions advanced the Learned Senior Advocate appearing on behalf of the petitioner is that the order of Learned trial court is bereft of any reasoning because the said order was allowed on 14/11/14 only with the observation that “Amendment of the plaint has sought for if allowed will not change the nature and character of the suit. In the interest of justice and fair play such amendment has become necessary”.

**9.** It is further contended that the Opposite Parties prayed for recovery of possession from the present petitioners claiming to be the tenant in respect of the suit properties without impleading the landlord of the said property and by virtue of such amendment the entire nature and character of the suit will be

changed and will cause serious prejudice to the present petitioner/added defendants. Accordingly he prays for setting aside the said order of the Learned Trial Court by filing this revisional application.

**10.** A decision has been cited reported in **(2009) 10 SCC, 84, Revajeetu Builders and Developers v/z Narayan Swami and others** where the governing principles for grant or refusal of amendments under order VI Rule 17 and Section 35 of the Code of Civil Procedure has been framed by the Hon'ble Supreme Court and the factors to be taken into consideration while dealing with applications for amendment is discussed in the following manner;

*On critically analysis both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:*

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;*
- (2) whether the application for amendment is bona fide or mala fide;*
- (3) The amendment should not cause such prejudiced to the other side while cannot be compensated adequately in terms of money;*

- (4) *refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- (5) *whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*
- (6) *as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.*

*These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.*

**11.** Another decision cited, reported in 2022 SCC Online SC 844 (Asian Hotels North Limited V/Z Alok Kumar Lodha and others where it was observed by the Hon'ble Court that the principle that the plaintiff is the *dominus litus* shall be applicable only in case where parties sought to be added as defendants are necessary and or proper parties.

In the given case the plaintiff never added the defendant as a necessary party rather they added themselves being the transfer purchaser.

Per contra Mr. Kasinath Dey the Learned Advocate appearing on behalf of the Opposite Parties raise strong objection against the submissions advanced by the petitioner and submits that no irregularity or in correctness made there in the order passed by the Learned Trial Court. He made two fold prayers. The first one is that the present petitioner according to their own volition added as a party defendant in the suit by filing an application. Under Order 1 Rule 10 (2) Code of Civil Procedure allows the plaintiff to amend the plaint in such manner as may be necessary where a defendant is added and amended copies of the summons and of the plaint to be served on the new defendant. Therefore in the instant case admittedly the added defendant claimed to be the owner of the property and purchased the same during pendency of the suit. The Opposite Parties when filed the suit for declaration of their partnership business were not aware of any such transfer of ownership and never added the alleged landlord as the party defendant. In terms of the specific provision as stated above the plaintiff has ample power to amend the plaint in order to make out a case against the added defendant. Therefore he prays for dismissal of this revisional application.

**12.** The second limb of argument was that the application for amendment filed under Order VI Rule 17 of Code of Civil Procedure was not proper but the same should not render the purpose of amendment otiose.

**13.** Order 1 Rule 10 (4) of Code of Civil Procedure permits a necessary party to be added as a party in a proceeding and the plaintiff is given liberty to amend the plaint “*Under such circumstances in such manner as may be necessary*” and to serve the amended copies of the summons of the plaint upon the added party.

**14.** As per requirement of law in terms of order I Rule 10 (4) of the Code of Civil Procedure where the prayer for addition of party is allowed the corresponding pleading are required to be amended .The question to be decided is, whether under the garb of order I Rule 10(4) the plaintiff can introduce a new case, way different from the original prayer made in the suit filed by him.

**15.** *In (2002) 2 SCC, 445 Gurudial Singh vs Raj Kumar Aneja* The Hon’ble Supreme Court held ‘*An amendment may involve withdrawal of an admission previously made, may attempt to introduce a plea or a claim barred*

*by limitation or may be so devised as to deprive the Opposite Party of a valuable right accrued to him by lapse of time and so on. It is therefore necessary for an amendment application to set out specifically in his application seeking leave of the court for amendment in the pleading as to what is proposed to be omitted form or altered or substituted in or added to the original pleading’.*

**16.** The above observation nullifies the plea taken by the present Opposite Party to that extent that the amendment sought for was wrongful mentioned as filed Order VI Rule 17 and the mere mistake of nomenclature *ipso facto* does not disentitle him from amending the plaint in terms of the specific provision of Code of Civil Procedure.

**17.** Therefore this court is unable to concur with the submission advanced by the Opposite Party that the amendment if any to be made in the pleading, as a consequence of addition of party in terms of Order I Rule 10 (4) and application need not be filed under Order VI Rule 17 Code of Civil Procedure.

**18.** The suit was filed by the plaintiff with prayers for declaration that the business in the name and style of M/s Harmonics carried on the disputed shop room and dealing in some consumer goods of pioneering engineering company is part of the partnership business namely M/s Pioneering Engineering

Company where plaintiff has got 5% share and defendant got 95% share along with accounts of profit, losses and asset of pioneering engineering company since dissolved with effect from 31.11.86. Nowhere in the original plaint prayer was made for a declaration as to his tenancy right in respect of the disputed shop room. The proposes amendment sought for was for recovery of possession of the tenancy of M/s. Pioneering Engineering Company at premises no 158, Lenin Sarani from the added defendant who are the present petitioners, as trespassers and illegally transferred without the leave of the court. This court is unable fathom it out as to on what capacity the plaintiff asked for the recovery of possession when the plaintiff's made out a case that he was sleeping partner and firm was a tenant in respect of the shop room.

**19.** The present petitioners being the added defendants purchased the property from the erstwhile owner Om Prakash Shaw the father of Opposite Party against whom the suit was filed. Upon the death of Om Prakash Shaw the Opposite Parties were substituted as legal heirs and subsequently on death of Opposite Party no'1 the present Opposite Party no and 3(a) and (c) added. The plaintiff claimed that there was a partnership agreement between the predecessor of the present Opposite Parties and the proforma Opposite Party in

the name and style of pioneering engineering company where the 5% share belongs to the said plaintiff and the defendant no 1 (proforma opposite party) had 95% shares and hence became the partner of the said firm in the year 1996.

**20.** The present petitioner therefore prayed to be added as party defendant at his instance who purchased the property from the erstwhile owner. The plaintiffs had to file amended plaint as a consequence of such addition of party since the order allowing addition of party was never challenged before the Hon'ble court. The relevant provision under Order (1) Rule 10(4) Code of Civil Procedure permits the present Opposite Parties to file the amended plaint incorporating the added defendant as a party and also to that extent which is essential for purpose of adjudication of the matter. This permission can never be interpreted as right of the plaintiff to introduce a new case. The plaintiff actually intend to do is really alter or amend the pleading to replace the entire pleading altogether. Order VI rule 17 of the Code of Civil Procedure confers a discretionary jurisdiction on the court exercisable at any stage of the proceedings in such manner and on such terms as may be just. So the

amendment will always be allowed by the court when it is necessary for the purpose of adjudication.

**21.** The Learned Trial Court while allowing such prayer only stated that the amendment of plaint as sought for “ if allowed will not change the nature and character of the suit .Moreover, the amendment as sought for if allowed will be helpful for proper and complete adjudication”. The Learned Court failed to consider the fundamental principles governing while dealing with an application for amendment and failed to consider as to whether under the garb of amendment the entire nature and character of the suit will be changed or not. In the instant it is evident that the proposed amendment would change the entire nature and character of the suit. In the above circumstances this court is unable to concur with the view expressed by the Learned Trial Court and therefore the said order calls for an interference.

**22.** Accordingly the instant revisional application stands allowed.

The order passed by Learned Judge Bench XIIIth (13th Bench City Civil Court, Calcutta) on 14.11.14 is set aside. Liberty is however given to the Opposite Party to take out appropriate application for amendment if at all necessary, as a consequence of addition of the present petitioner being the defendant without changing the nature and character of the suit.

**23.** There will be however no order as to cost.

**24.** Urgent Photostat certified copy of the Judgement if applied for be given to the parties of priority basis.

**(Chaitali Chatterjee Das, J.)**

सत्यमेव जयते

Calcutta