

T.S. - 576 of 2021 (CNR WBCC01-001760-2021)
Present : Sri S. Dasgupta, Judge, (J.O. Code WB01246)

Order No. : 34
Dated : 26.03.2025

Today is fixed for hearing the application under Order 6 Rule 17 of the CPC dated 18.01.2022 and for acceptance of commissioner's report.

Both parties file haziras.

The petition under Order 6 Rule 17 of the CPC is taken up for hearing.

Heard Ld. Advocates for both sides. Perused the materials on record.

The plaintiff has prayed that the following words be inserted in paragraph 2 of the plaint on the 3rd line after the word regularly :- "the plaintiff after purchase the suit premises, by his letter dated 10.10.2012 informed the defendant about his purchase." The plaintiff has stated that due to inadvertence and typographical mistake it is required to amend the plaint.

On the other hand, the defendant has stated in his written objection to the said application that the plaintiff has filed the said amendment application after realizing that the said suit will fail for want of attornment letter to be issued by the plaintiff to the defendant after purchasing the suit premises. The defendant has stated that it is settled principle of law, lacuna in the pleading cannot be cured by way of amendment. The defendant has also stated that the plaintiff had issued a letter dated 10.10.2012 to the defendant intimating the purchase of the suit premises which has not been mentioned in the plaint nor in the instant petition and has stated that the said application is misconceived and liable to be dismissed with cost.

The defendant has stated that the said letter was not served upon him, the same is a manufactured document and is a product of after thought. The defendant has submitted that the plaintiff is trying to fill up the lacuna of the plaintiff's case by amending the plaint through the instant petition.

On perusal of the written objection filed by the defendant on 24.11.2021 to the plaintiff's application under Order 39 Rule 1 & 2 read with section 151 of the CPC, prior to filing of the instant petition by the plaintiff on 18.01.2022, it appears that the defendant has stated in the said written objection that the plaintiff did not issue any attornment letter to the defendant.

As such, it appears that the plaintiff has not been able to prove before this Court that the proposed amendments sought for are formal in nature and if allowed, will not change the nature and character of the suit.

Hence, the application under Order 6 Rule 17 of CPC is considered and rejected on contest, but without any cost, and accordingly disposed of.

Fix 05.06.2025 for acceptance of commissioner's report.

D/C by me

Sd/-

Judge, Bench-III,
City Civil Court, Calcutta

Sd/-

Judge, Bench-III,
City Civil Court, Calcutta

