

EJECTMENT SUIT NO. 424 OF 2013 (5810 of 14)
C.N.R No. WBPS01-000493 - 2013

IN THE COURT OF 4TH BENCH, PRESIDENCY SMALL CAUSE
COURT, CALCUTTA.

PRESENT: SMT. ARCHITA SEN, JUDGE, BENCH-4, PRESIDENCY
SMALL CAUSE COURT.

ORDER NO- 147
DATED 28.11.2025:

Today is fixed for passing Order in respect of the petition dated 03.11.2025 under Order VIII Rule 9 of the CPC filed by the defendants. Both the parties file separate attendance through their respective Ld. Advocates.

The record is taken up for passing Order.

Perused the record including the petition dated 03.11.2025, the written objection and the affidavit in reply.

Considered.

The petition dated 03.11.2025 contemplates an Order granting leave to the defendants to file additional written statement. It is stated by the defendants that the instant suit was filed on the ground of reasonable requirement of the plaintiff and her family members. Issues are so framed by the Court and for determination of that issue the existing accommodation of the plaintiff and her family members and the existence of any property other than the suit building, need to be brought before the Court. The defendants further stated that they recently came to know about the deed of declaration and development agreement on the basis of which the plaintiff and her family members obtained additional accommodation apart from the accommodation disclosed in the plaint. On 03.09.2025 and 04.09.2025 the defendants applied for obtaining the certified copies of the aforesaid documents and they deed of declaration dated 24.05.2025 and development agreement dated 22.05.2025 recently. As per the said agreement Amit Kar, the son of the original plaintiff and the husband of the present plaintiff runs a business of promoting and developing under the name and style M/S Ma Siddheswari Builder and he has taken up the work of promoting and developing an existing three storied building being premises no.3A, Madan Mohan Tala Lane, which is adjacent to the suit building and after construction the building except the first floor will be allocated to the developer, i.e. Amit Kar. These facts are necessary for adjudication of issue no.3 and 4, for which the defendants filed the instant petition.

Ld. Advocate for the defendants relied on the following precedents of the Hon'ble Supreme Court of India:

- ◆ **Andhra Bank Vs. ABN Amro Bank N.V and Others, 2007(6) SCC 167.**

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- ◆ *Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, 2009(10) SCC 84.*
- ◆ *Sushil Kumar Jain Vs. Manoj Kumar and Another, 2009(14) SCC 38.*

The plaintiff files written objection against the instant petition stating that the instant petition is not maintainable. This petition has been filed at the stage of argument deliberately to drag the trial of the suit. There is a specific direction of the Hon'ble High Court, Calcutta for the expeditious disposal of the suit. But the defendants repeatedly attempted to make such direction of the Hon'ble Court inoperative by filing successive frivolous applications. Filing of the instant petition is also such an attempt. Apart from that the plaintiff also stated that premises no.3A, Madan Mohan Tala Lane does not belong to the plaintiff or any members of the family of the plaintiff. The husband of the plaintiff, being a developer, agreed to reimburse the cost of construction from the portion of the property to be allotted to him on the completion of the venture. By the agreement ownership of that building has not been transferred to the husband of the plaintiff. Further more, owner no.1 of the agreement and his wife have passed away after execution of the agreement. No plan has been sanctioned as yet. In such circumstances, there is no clue when the project will be started. At present neither the plaintiff nor any members of her family has any right over the premises no.3A Madan Mohan Tala Lane. So the proposed facts do not have any impact over the instant suit. The provision of Order VIII Rule 9 of the C.P.C can not be used to frustrate or delay the trial of the suit. Banking on these grounds the plaintiff prayed for rejection of the instant petition.

Order VIII Rule 9 of the Code of Civil Procedure deals with the subsequent pleadings. It states that no pleadings, subsequent to the written statement of a defendant other than by way of defence to set off or counter claim, shall be presented except with the leave of the Court. But the Court may, at any time, require a written statement or additional written statement from any of the parties. With the help of this provision the Court would grant permission to the defendant for filing subsequent pleadings, if found relevant and causes no prejudice to the plaintiff, even in the absence of any claim for set off or counter claim. A defendant should not be allowed to file any pleadings subsequent to the written statement, containing plea which is virtually change the nature of the suit and requires *de novo* trial. Initially the instant suit was filed by Sephali Kar who had the life interest in respect of the suit building. She filed the instant suit on the ground of acquisition of property by defendant no.1 in Kolkata and the reasonable requirement of the suit premises for her use

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and occupation and also for the use and occupation of her son, daughter in law and grand son. The nature of requirement of the original plaintiff was two fold; residential as well as non residential. On perusal of the plaint it appears that as many as 8 rooms were required by her for the business of M/S Om Saptarshi International Service Pvt. Ltd with which the son, daughter in law and grand son of the original plaintiff, were involved and 4 rooms were required for the purpose of residence. Subsequently on the demise of original plaintiff, her daughter in law became the sole owner of the suit building on the strength of the Will and testament of the original owner which was duly probated. After being the owner of the suit building, Jayasree Kar transposed in the place of plaintiff in this suit. After such transposition, no amendments were made in the averments of the plaint regarding the requirement ground. With the death of the original plaintiff, her personal requirement for one veg kitchen has perished. But the other requirements of her family members still exist.

For determination of the requirement of the plaintiff, the actual available accommodation of the parties are required to be considered. The defendants, by filing the instant petition claimed that the plaintiff and her family members have obtained additional accommodation by way of the development agreement. On careful perusal of the photocopies of the documents it is deciphered that by executing the deed of declaration the executors declared themselves to be the joint owners, they propose to construct a new building at premises no.3A Madan Mohantala Lane by demolishing the existing building and for that they will submit the plan for such construction before the K.M.C for necessary sanction. By entering into an agreement, the owners of the said property have agreed with M/S Ma Siddheswari Builder to hand over the possession of the said building to it for the purpose of developing the property by renovating and repairing the same. It is also agreed between the parties to the agreement that the developer will renovate and repair the building at his cost and on completion of the work the owners will be entitled to the entire first floor of the building along with Rs.40 Lacs to be paid by the developer in the manner agreed between the parties. The remaining portion of the said building, except the roof, has been allocated to the developer with exclusive right to transfer or otherwise deal with it and for that the owners shall execute deed of conveyance of the undivided share in the land contained in the said property. First of all neither the plaintiff nor her family members have acquired any right or title over the premises no.3A, Madan Mohantala Lane by the dint of the documents filed by the defendants. Amit Kar, the husband of the present plaintiff, is not a party to these documents in his personal capacity. The agreement has been entered into with M/S Ma Siddheswari Builder, of which Amit Kar is the

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proprietor. When the construction work of premises no.3A, Madan Mohantala Lane would be completed and the agreed portion of the said building would be allocated to the developer followed by the execution of deed of conveyance, M/S Ma Siddheswari Builder would be the owner of the said portion of the building; not Amit Kar. True that Amit Kar is the proprietor of M/S Ma Siddheswari Builder, but the acquisition of property, which will take place in future, if the terms of the agreement are fulfilled, would be by M/S Ma Siddheswari Builder. So it would not become the personal property of Amit Kar, the husband of the present plaintiff. Even if there is a chance of acquiring a portion of premises no.3A Madan Mohantala Lane in future, neither the plaintiff nor any members of her family would become the owner of the same. Amit Kar, being the proprietor of M/S Ma Siddheswari Builder, can represent his firm in the agreement but any gain through that agreement would be of the firm; not of Amit Kar in his personal character. So the property the title of which would be acquired by M/S Ma Siddheswari Builder through its proprietor Amit Kar, can not be pooled with the property acquired by the plaintiff by purchase, inheritance or otherwise. For such reason the facts of the deed of declaration and the development agreement are not relevant in the suit where the personal properties of the present plaintiff are the subject of consideration.

Apart from the reason stated above, the facts proposed by the defendant to incorporate in the additional written statement are not relevant for the instant suit because those facts do not have the material impact on the rights and obligations of the parties. The documents filed by the defendants only disclose a chance of getting some portion at premises no.3A Madan Mohantala Lane in future with a rider that the terms and conditions of the agreement are fulfilled. So, even if this Court accepts the plea of the defendants that the property acquired by M/S Ma Siddheswari Builder is the personal property of Amit Kar, then also it can not be ignored that a clear right has not been created in favour of Amit Kar by the said agreement at present. The facts of agreement for development of certain property and on completion getting a particular portion of that property by Amit Kar on behalf of his proprietorship firm for the purpose of business, do not have the potential to mould the ground of relief in the present suit. Even if this Court believes that the said property will be acquired by Amit Kar, but it should be kept in mind that the right of Amit Kar in respect of the portion of premises no.3A Madan Mohantala Lane has not been crystallized yet. So in deciding the question whether the plaintiff has any other alternative suitable accommodation at the present day, the property of 3A Madan Mohantala Lane can not be considered because at this moment the husband of the plaintiff has not right over that

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property, except developing the same. The Hon'ble Apex Court in **Maganlal Vs. Nanasaheb, (2008)13 SCC 758** has observed that "it is common experience in our country that especially landlord-tenant litigation prolong for long time. It is true that neither the person who has started the litigation sit idle nor can the development of the events be stopped by him. Therefore, the crucial event should be taken as on the date when the suit for eviction was filed, unless the subsequent events materially change the ground of relief." In the instant suit the subsequent facts, brought by the defendants, do not have any effect on the ground of reasonable requirement of the plaintiff.

So far as the precedents cited by the Ld. Advocate for the defendants are concerned, this Court finds that those are not applicable in this suit. In **Sushil Kumar Jain's case** (supra) the Hon'ble Apex Court observed that the admission made by the defendant in his written statement can be explained by filing the application for amendment of the same and in the case of an amendment of written statement, the Courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed. Similar view was expressed by the Hon'ble Apex Court in **Revajeetu Builders and Developers' case** (supra) but in this case the Hon'ble Court also observed that before the amendment can be allowed the Court should satisfy whether such amendment is necessary for the determination of the real question in controversy, or not. If that condition is not satisfied, the amendment can not be allowed. The defendants in the instant suit are not proposing to incorporate a new ground of defence or to substitute or alter any defence; they intends to incorporate such facts which are not relevant to the facts in issue. To decide the question whether the requirement of the plaintiff is *bona fide* or not, the future allocation of some property in favour of the husband of the present plaintiff, as a part of business transaction, can not be a relevant fact. The Court would have taken a liberal approach, as directed by the Hon'ble Apex Court, if the proposed facts would have been relevant for the real controversy. In **Andhra Bank's case** (supra) the Hon'ble Apex Court held that it is permissible in law to amend the written statement of the defendant by which only an additional ground of defence has been taken. In the suit at hand the defendants have already taken the defence that the plaintiff has sufficient accommodation at the suit building and at premises no.1/3A Hem Kar Lane. By filing the instant petition the defendants are not trying to incorporate the defence that the plaintiff has sufficient accommodation but they intended to add another property in the list of accommodation

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available to the plaintiff. But this Court, after carefully pondering over the contents of the documents filed by the defendants, held that this particular property does not have any connection with the suit. In view of the aforesaid discussion, this Court thinks that the instant petition has no merit and deserves to be rejected.

Accordingly it is

O R D E R E D.

That petition dated 03.11.2025 under Order VIII Rule 9 of the CPC, filed by the defendants is rejected.

The additional written statement filed on 03.11.2025, along with the petition dated 03.11.2025, can not be accepted.

The petition dated 03.11.2025 under under Order VIII Rule 9 of the CPC is thus disposed of on contest and without any order as to cost.

To 22-12-2025 for further argument by the defendants.

Typed,corrected and printed by me:

Judge, Bench-4
P.S.C.C, Calcutta
J.O Code WB01174

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