

**EJECTMENT SUIT NO. :- 221 OF 2010**  
**(CNR No. WBPS01-001164-2010)**  
**(JO CODE No. WB01165)**

**Before Smt. P. Shukla, Ld. Judge, 2nd Bench.**

Order no. - 94  
Dt. 05.03.2026

Today is fixed for passing order in respect of petition under Order VIII Rule 9 read with Section 151 of CPC filed by the defendant.

Both parties filed hazira.

It is submitted by Ld. Advocate for defendant that an application under Order 1 Rule 10 of CPC was filed on 18.02.2012 on behalf of the plaintiff stating that by a deed of gift dated 17.03.2011, Noorjahan Begum, the present plaintiff's mother had transferred her interest in the suit property in favour of her son Md. Alamgir, the present plaintiff.

The said application was allowed by the Order No. 19 passed on 17.01.2013 and the present plaintiff came on record in place and stead of the filing plaintiff Noorjahan Begum.

The following the change of plaintiff in the suit, the petitioner needed to amend the written statement but as his written statement had not been accepted till that, no amended written statement could be filed on behalf of the petitioner.

Subsequently, the defendant's written statement was accepted and such acceptance was recorded in the Order No. 75 dated 30.09.2023 and following its acceptance, the petitioner has been advised to file the present application seeking permission to file an additional written statement.

In view of the aforesaid state of affairs, the petitioner prays that leave may be granted to him to file an additional written statement in this suit.

Plaintiff verbally challenged the instant application.

Heard. Considered.

On perusal of the case record, it appears that by order No. 75 dated 30.09.2023 written statement of defendant was accepted with a cost of Rs.5000/- but I do not find any whisper that defendant was advised to file additional written statement.

It also appears that by order no. 19 dated 17.01.2013 present plaintiff came on record by way of substitution under Order 22 Rule 10 of CPC.

The Court is of the view that in case of substitution of plaintiff under Order 22 Rule 9 of CPC there is no permission to file additional written statement.

In case of substituted plaintiff only the cause title of the plaint is corrected accordingly.

Further, there is no explanation from delay from the defendant's side.

Substitution of plaintiff under Order 22 Rule 9 of CPC does not automatically give the defendant an absolute right to file an additional written statement. However, the Court has the discretion to allow if the substitution introduces new facts, cause of action or changes in the case's nature that the defendant must answer.

Further, if the substitution is accompanied by an amendment of the plaint, or if the new plaintiff introduces new allegations, the court may grant permission to file an additional written statement to ensure a fair trial.

In this case no new facts are introduced by substitution, nor filed an amended plaint with substitution petition.

Neither there is change in 'cause of action' nor change in the 'nature' of the suit.

Thus, this court is not inclined to allow the instant application.

Record is taken up for passing order under Section 151 of CPC.

Learned Advocate for defendant has submitted that on 12.04.2017, the petitioner filed an application under Order XXXIX Rule 7 of the CPC and prayed for inspection in terms of the several points mentioned in the said application.

The said application was allowed by the Order No. 51 passed on 12.02.2018 and the Learned Commissioner was directed to inspect in accordance with the points mentioned in the said application.

The Learned Commissioner appointed in the matter inspected the suit property only respect of one of the points mentioned in the said application and returned the writ of commission.

As several points mentioned in the said application remained to be inspected, the petitioner on 19.01.2021 filed an application for re-issuance of the writ.

In pursuance of the application dated 19.01.2021 for re-issuance of the writ of commission, the petitioner's learned Advocate on 10.03.2022 endorsed "no objection" on the said earlier application for inspection with a further note thereon craving liberty to take fresh steps and filed an application for filing fresh steps.

In view of the above fact that points of inspection specified in the said application filed by the petitioner and directed to be inspected by the order dated 12.02.2018 have not been complied with the petitioner prays that another learned Advocate Commissioner be appointed to inspect the suit property in terms of the order no. 51 dated 12.02.2018 passed in this suit.

Plaintiff verbally challenged the instant petition.

Heard. Considered.

On perusal of case record, it appears that petition of defendant under Order 39 Rule 7 of CPC was allowed by Order No. 51 dated 12.02.2018. It also appears that by Order No. 56 dated 09.07.2018 the date of commission was fixed on 18.07.2018, 23.07.2018 in presence of both parties and their respective Ld. Advocates.

The commission report is filed on 01.08.2018 by Ld. Advocate Commissioner Dolon Saha in accordance with Order No. 51 dated 12.02.2018.

Another commission report is also filed on 27.01.2015 by Ld. Advocate Commissioner in accordance with application under Order 39 Rule 7 of CPC filed by plaintiff.

There is no explanation from the defendant that when Commission Report was filed on 01.08.2018 he did not raise any objection.

The instant application is filed on 04.02.2026 after a delay of more than seven years without providing any sufficient cause or explanation.

Now the suit is fixed for D.W.

The present application is nothing but an attempt by defendant to delay the proceeding and fill up the lacuna in his suit by creating further evidence by way of omission.

Thus, the Court is not inclined to allow this application.

Hence, it is

**ORDERED**

That the petition under Section 151 of CPC is rejected on contest.

To 22.04.2026 for D.W. positively.

D/C by me.

Sd/-

Judge, Bench - II,  
P.S.C. Court, Calcutta.

Sd/-

Judge, Bench - II,  
P.S.C. Court, Calcutta.