

Title Suit 25 of 2017 (Reg. 25 of 2017)
CNRWBSP07-003028-2017
J.O.Code No. WB01066

Order dtd. 08/01/2026.

Today is fixed for cross examination of PW 1.

Plaintiff files hazira through Ld. Advocate.

Defendant no. 1 and defendant no. 5 to 34 also file hazira through respective Advocates.

One petition is filed on behalf of defendant no. 1 with a prayer to direct the plaintiff to record the change of name of defendant no. 1 company on the ground of amalgamation.

Copy of the petition is served upon the plaintiff and defendant no. 5 to 34.

It is pleaded by Ld. Advocate for the Zircon Dealers Private Limited (defendant no. 1) that defendant no. 1 company has been amalgamated with Kayal Developers Pvt. Ltd on 08.07.2022 under order of the Regional Director, Registrar of Companies. A copy of confirmation certificate is annexed with the instant petition.

Ld. Advocate for the plaintiff raised objection against the prayer of defendant no. 1 referring the provision of Order 22 Rule 10 CPC and submits before the Court that in case of devolution of interest during pendency of the suit, the suit may be continued by or against the person to or upon whom such interest has been devolved. It is pleaded that the burden to substitute the present defendant company does not lie upon the plaintiff but on the assignee of interest on devolution. It is further pleaded that existing defendant no. 1 who is an out going party as per petition, has no right to pray before the court for impleading the assignee. It is further submitted that it is the assignee who has to pray before the Court for substitution of existing defendant in proper form. Ld. Advocate for the plaintiff thus, prays before the Court for rejection of the instant application.

On perusal of the instant petition and upon considering the objection raised by the plaintiff the Court has decided the matter as follows :

That the amalgamation of Zircon Dealers Private Limited (defendant no. 1) with Kayal Developers Pvt. Ltd has been confirmed by the Regional Director under Companies Act by its confirmation order dated 08.07.2022. More than three years have been elapsed since amalgamation but defendant

no. 1 did not find any necessity to come before the Court with the fact of amalgamation. Now, the Zircon Dealers Private Limited (defendant no. 1) whose existence has already been amalgamated with another company presented before the Court the instant application under the Seal of Director of erstwhile Zircon Dealers Private Limited. The transferee company namely, Kayal Developers Private Limited does not come before the Court to continue with the instant suit in place of Zircon Dealers Private Limited as substituted defendant no. 1.

According to Order 22 Rule 10 CPC it is the transferee company upon whom all the existing interest and liability of the transferrer company has been devolved, is under obligation to replace and substitute the previous company, and not upon the plaintiff.

It is clear before the Court that defendant no. 1 is trying to shift the burden on the shoulder of plaintiff only to drag the procedure.

The petition for substitution of defendant no. 1 should be filed by the transferee company and not by Zircon Dealers Private Limited whose existence has already been amalgamated with.

As argued by the Ld. Advocate for the plaintiff, the plaintiff has no statutory obligation to substitute the transferee company, if any.

In the premise of above discussion I do hereby reject the instant application filed by defendant no. 1.

The suit be proceeded against existing defendant no. 1 until proper steps taken by the transferee company, if any.

It is pertinent to mention that the result of the proceeding shall be binding on the transferee company in accordance with law.

Fixing 16.01.2026 for cross examination of PW 1 by defendant no. 1 as last chance.

D/C by me,

Sd/-
Civil Judge (Sr. Divn.)
Small Causes Court, Sealdah

Sd/-
Civil Judge (Sr. Divn.),
Small Causes Court, Sealdah