

19.09.2025
Court No.6
Item No.40
sudipta

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

C.O. 3513 of 2025

**Sk. Samir Ali
Vs.
Nesar Ahmed & Ors.**

Mr. Tanmoy Mukherjee
Mr. Gautam Das

...for the petitioner

Mr. Shahnawaz Alam
Mr. Malaika Ali
Ms. S. Arif

...for the opposite parties

1. This application under Article 227 of the Constitution of India is at the instance of the defendant / petitioner and is directed against an order being No. 49 dated August 26, 2025 passed by the Learned Civil Judge (Junior Division), Additional Court, Sealdah, South 24 Parganas in Title Suit No. 152 of 2019. By the order impugned the application under Order VI Rule 17 of the Code of Civil Procedure filed by the defendant / petitioner herein stood rejected.
2. Mr. Mukherjee, learned Advocate appearing for the petitioner submits that the petitioner filed an application which was registered as Misc. Case

No.1 of 2020 and the same is pending before the learned Thika Controller, Kolkata praying for cancellation of the deed of conveyance dated September 18, 2009 being deed no. 12395 and the deed of conveyance being no. 11374 dated 2nd September, 2011 and for injunction. .

3. Mr. Mukherjee submits that the petitioner filed an application for amendment of the written statement in order to incorporate the fact of pendency of the proceedings before the Thika Controller. He submits that the proposed amendments are necessary for the purpose of deciding the real controversies between the parties.
4. Heard the opposite parties on such submissions. The opposite party filed a suit for recovery of *Khas* possession of the suit property by evicting the petitioner therefrom. The petitioner claims to have acquired title in respect of the suit property from his father. The petitioner is contesting the said suit by filing a written statement. It is the specific case of the petitioner in the said written statement that the father of the petitioner, namely, Haider Ali and his uncle, namely, Amir Ali were the joint thika tenants in respect of the land measuring about 3 cottah 11 chittaks and 34 sq.ft. lying and situated at premises no. B/6/H/2 and / or premises no.6/2

Gopi Mondal Lane, P.S. Cossipore, Kolkata 700002. It was further stated in the written statement that the father of the petitioner and his uncle divided the land / premises by a deed of partition executed and registered at the Office of the ADSR, Cossipore, Dum Dum, and the father of the petitioner, namely, Haider Ali became the owner / thika tenant in respect of the land measuring about 1 cottah 15 chittaks lying and situated at premises no. B/6/H/2 and / or premises no.6/2 Gopi Mondal Lane, P.S. Cossipore, Kolkata 700002. The petitioner in written statement specifically denied that the thika tenant has any right to sell and / or alienate and / or convey and / or transfer of the suit property in violation of the provisions of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 1981 and 2001. It was stated in the written statement that the father of the petitioner had no right to transfer the land and structure standing on the said premises by virtue of a deed of conveyance dated September 18, 2009 and for which the same is to be declared as null and void.

5. The petitioner claims to have initiated a proceeding before the Kolkata Thika Tenancy sometimes in the year 2020.

6. In course of argument Mr. Mukherjee drew the attention of the Court to the information supplied under the provisions of the Right to Information Act, 2005 wherefrom it appears that the status of tenancy in respect premises no. B/6/H/2, Gopi Mondal Lane, P.S. Cossipore, Kolkata 700002 is pending for determination till date. The petitioner filed the application under Order VI Rule 17 of the Code of Civil Procedure praying for amendment of the written statement. After going through the schedule of the proposed amendment this Court finds that the fact which were stated in the original written statement challenging the right of the predecessor-in-interest of the petitioner to transfer the suit property by way of a deed of conveyance was sought to be incorporated by way of amendment to the written statement. By way of amendment the petitioner also sought to incorporate that the fact that a Misc. Case no. 1 of 2020 is still pending.

7. It is not in dispute that the suit was fixed for argument on 19th of February, 2024. Mr. Mukherjee submits that the information under the provisions of Right to Information Act was supplied to the petitioner after the date was fixed for argument in the suit. Be that as it may the

petitioner was well aware of the pendency of the Misc. Case and it is not the case of the petitioner that they came to know about the pendency of the said Misc. Cases after obtaining the information under the Right to Information Act. The application for amendment of the written statement was filed only on 15th of July, 2025 i.e. more than one year after the receipt of the information under the provisions of Right to Information Act. Since the facts which the petitioner sought to incorporate by way of amendment were already stated in the written statement, this Court is of the considered view that the proposed amendments are not necessary for the purpose of deciding the real controversy between the parties. Mere pendency of a Misc. Case wherein the status of tenancy in respect of premises in question is still pending for determination cannot be a ground to allow the prayer for amendment when the basic foundational fact has already been stated in the original written statement. That apart the delay in filing the application for amendment has not been satisfactorily explained.

8. Learned Trial Judge assigned cogent reasons for rejecting the application for amendment of plaint.

9. This Court is not inclined to interfere with such order.

10. Accordingly, CO 3513 of 2025 stands dismissed.

11. There shall be, however, no order as to costs.

12. Urgent certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)