



21.2.2025
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Ct. no. 237
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CO 3895 of 2024

**M/s. Karnani Properties Ltd & Ors.
Vs.
Haroor Hall**

Mr. Tanmoy Mukherjee
Mr. Neelesh Chowdhury
Mr. A. Poddar ...for the Petitioners

Petitioner herein has taken exception to the order no. 55 dated 17th September, 2024 passed by the learned Judge, Vth Bench, City Civil Court, Calcutta, the present application has been preferred by the petitioners. By the impugned order, learned court below allowed the plaintiff's prayer for amendment under Order VI Rule 17 of the Code of Civil Procedure.

Being aggrieved by that order, the learned counsel for the petitioners submits that a Division Bench of this High Court while disposing the first miscellaneous appeal being FMA 1906 of 2015, was of the clear view that though the plaintiff has claimed its permissive possessory right to use the suit lawn as playground of the students and teachers of the plaintiff's school, but no document has been annexed to the injunction application, showing that the plaintiff, in fact, was in possession of the disputed lawn as on the date of filing of the suit when they sought for such ad-interim injunction. Thereafter



since the plaintiffs failed to file any document in support of their possession, their application for injunction under Order 39 Rule 1 and 2 was rejected by the Trial court by an order dated 17th November, 2016 and thereafter, the recalling petition was also rejected by an order dated 20th June, 2018.

According to the petitioners, the issue relating to plaintiff's possession over suit land as stated above, has already been adjudicated and attained its finality. Suppressing the same, the plaintiff filed an application for amendment where he sought for incorporation of the said issue which is barred by res judicata. However, learned court below allowed the plaintiff's prayer for amendment of plaint without considering the background of the case.

The petitioners are directed to serve a copy of the application upon the opposite party through speed post intimating the next date of hearing and to file affidavit of service on the returnable date.

Let the matter appear on 27th March, 2025 under the heading **“Contested Application”**.

Having heard the learned counsel for the petitioners and that the petitioners have made out an arguable case which requires adjudication on merit, let all further proceedings being Title Suit no. 414 of 2015 presently pending before the learned Judge, Vth Bench, City Civil Court, Calcutta be stayed for a



period of eight weeks or until further order whichever is earlier.

Urgent Photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)