



OD-2

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
Ordinary Original Civil Jurisdiction

IA NO. GA./7/2025
In
CS/118/1987

CHANDRA KALA DEVI CHOUDHRY & ORS. VERSUS
DHARAMCHAND CHAUDHRY AND ORS.

Before:

The Hon'ble Justice BISWAROOP CHOWDHURY

Date: 18th JULY 2025

Appearance:
Mr. Sourojit Dasgupta, Adv.
Mr. Joydeep Guha, Adv.
...for the respondent/plaintiff.
Mr. Mohit Gupta, Adv.
...for the defendant no.1

The Court: This application is filed by the Defendant no.1 for the following reliefs:

- a) Leave be granted to the defendant No. 1 to amend the written statement in the manner shown in Red ink in the copy of written statement being Annexure 'B' hereto.
- b) The department be directed to carry out the amendment within 2 weeks from the date of the order to be made herein and/or within such further time as this Hon'ble Court may direct.
- c) Leave be granted to the defendant No. 1 to re-verify and re-affirm the written statement within such time as this Hon'ble Court may direct.
- d) Ad-interim order in terms of prayers above.
- e) Such further or other orders as to this Hon'ble Court may seem fit and proper.

It is the contention of the petitioner/defendant that after filing of written statement the said original plaintiff Narayan Prasad Chowdhury, since deceased entered into a Memorandum of Settlement on 23rd March 1998 whereby he admitted



that the allegations regarding the Physical and mental condition of the said Bhagwati Prasad Chowdhury made in instant suit were unfortunate and confirmed that the said Bhagawati Prasad Chaudhury was neither a person of consumed mind nor was unable to look after himself or to make his own judgment. By the said Memorandum of Settlement the original plaintiff acknowledged that the defendant no-2 was legally and validly adapted by the said Bhagwati Prasad Chowdhury.

It is contended that the said fact has a vital bearing in adjudication of the instant suit and the proposed amendments are formal in nature and if allowed will not change the nature of the suit.

The application is opposed by the Plaintiffs by filing affidavit. It is the contention of the plaintiffs that the purported document dated 23rd March 1998 was within the knowledge of the defendants on the date of purported execution of the said document. Hence the defendants were admittedly aware and had full knowledge with regard to the said document for the case 27 years and the prayer for amendment made after almost 27 years cannot be allowed.

The defendant no-1 by filing the affidavit in reply has denied the contentions of the plaintiffs by contending that the plaintiffs have not taken any steps to get the suit heard. It is also contended that the amendment if allowed will not cause prejudice to the plaintiffs.

Heard Learned Advocates for the parties. Perused the petition filed and materials on record. Before proceeding to decide the material in issue it is necessary to consider the provision relating to amendment as provided under Order VI Rule 17 of the Code of Civil Procedure.

Order VI Rule 17 of the Code of Civil Procedure Provides as follows:

Rule 17. Amendment of pleading- The Court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be



necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after trial has commenced, unless the Court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial.

In the instant case trial has not commenced thus liberal view should be taken to consider the prayer for amendment.

In the case of Baldev Singh and Ors VS Manohar Singh and Anr reported in AIR-2006 S.C. 2832 the Hon'ble Apex Court observed as follows:

"17. Before we part with this order, we may also notice that proviso to Order 6 Rule 17 of the CPC provides that amendment of pleadings shall not be allowed when the trial of the Suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the Suit. From the record, it also appears that the Suit was not on the verge of conclusion as found by the High Court and the Trial Court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted herein after, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 of the CPC which confers wide power and unfettered discretion to the Court to allow an amendment of the written statement at any stage of the proceedings."

In the case of Usha Bahashaheb Swami V Kiran Appaso Swami and ors reported in AIR 2007 S.C. 1663, the Hon'ble Apex Court observed as follows:

"15. Before dealing with the question whether the amendment sought for



was rightly rejected by the High Court or not, we may first consider the principles under which amendments of pleadings can be allowed or rejected. The principle allowing or rejecting an amendment of the pleadings has emanated from Order 6 Rule 17 of the Code of Civil Procedure, which runs as under:

"The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial"

16. From a bare perusal of Order 6 Rule 17 of the Code of Civil Procedure, it is clear that the court is conferred with power, at any stage of the proceedings, to allow alteration and amendments of the pleadings if it is of the view that such amendments may be necessary for determining the real question in controversy between the parties. The proviso to Order 6 Rule 17 of the Code, however, provides that no application for amendment shall be allowed after the trial has commenced unless the court comes to a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. However, proviso to Order 6 Rule 17 of the Code would not be applicable in the present case, as the trial of the suit has not yet commenced.

17. It is now well-settled by various decisions of this Court as well as those by High Courts that the courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a bonafide one. In this connection, the observation of the Privy Council in the case



of Ma Shwe Mya v. Maung Mo Hnaung [AIR 1922 P.C. 249] may be taken note of. 2013-6HCOS:24

The Privy Council observed:

"All rules of courts are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change by means of amendment, the subject-matter of the suit."

As right to defend a suit or proceedings is a basic right a litigant should be granted all reasonable opportunity to defend a case brought against him. Unless a particular defence is barred under law it has to be permitted to be taken by a litigant.

Upon considering the facts of the case and the proposed amendment sought and considering the Judicial Pronouncements this Court is of the view that save and except delay the plaintiffs has not been able to make out any ground for refusing the prayer for amendment. As trial has not commenced the in the interest of justice the amendment sought for should be allowed.

Let there be an order in terms of a, b, and c of the Master summons dated 7th day of April 2025.

The amendment be carried out within 4 weeks. Pursuant to the amendment being carried out re-verification of the written statement be made within one week.

(BISWAROOP CHOWDHURY, J.)