

(2011) 08 CAL CK 0116

Calcutta High Court

Case No: C.O. No. 1630 of 2007

Nur Khatoon Bibi @ Bewa

APPELLANT

Vs

Atiman Bibi and Anr

RESPONDENT

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**Date of Decision:** Aug. 16, 2011**Hon'ble Judges:** Prasenjit Mandal, J**Bench:** Single Bench**Advocate:** P.P. Roy, for the Appellant; Saidur Rahaman, for the Respondent**Final Decision:** Dismissed

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### Judgement

Prasenjit Mandal, J.

This application is at the instance of the Defendant and is directed against the Order No. 28 dated November 1, 2006 passed by the learned Civil Judge (Junior Division), Additional Court, Lalbagh in Title Suit No. 278 of 2005 thereby rejecting an application for amendment of the written statement.

2. The Plaintiff / opposite party herein instituted a suit for declaration, injunction and other reliefs. The Petitioner is contesting the said suit by filing a written statement denying the material allegations made in the plaint and the said suit was at the stage of cross-examination of the P.W.1. At that stage, the Defendant / Petitioner herein filed an application for amendment of the written statement and that application for amendment was rejected by the impugned order. Being aggrieved, this application has been preferred.

3. Now, the question is whether the impugned order should be sustained.

4. Upon hearing the learned advocate for the Petitioner and on going through the materials on record, I find that the learned Trial Judge has rightly rejected the application for amendment of the written statement. Initially, the Petitioner admitted certain facts with regard to the suit properties as described in Schedule "Ka" and "Kha" of the plaint in paragraph No. 9 of the written statement. But, by the proposed amendment, the Petitioner has wanted to withdraw those admissions

made in the paragraph No. 9 of the written statement.

5. The amendment of the plaint and the amendment of the written statement are not in the same footing. The Defendant is at liberty to take the alternative plea in the written statement. Even, the Defendant may give explanation relating to the admission made earlier why she made the admission at the earlier stage. The amendment can be allowed provided the opponent, is not prejudiced or injustice is caused to the opponent. In the instant case, the suit was filed in the year 1998. The written statement was filed by the Petitioner on August 6, 2003 and the said suit was at the stage of cross-examination of the P.W.1. No. doubt that all amendments necessary for settlement of the dispute between the parties once for all, should be allowed. But, if the effect of amendment is the withdrawal of the admission and if it causes prejudice or injustice to the other side, the amendment should not be allowed.

6. In the instant case, I find that by the proposed amendment, the Petitioner had prayed for withdrawal of the admission made earlier in paragraph No. 9 of the written statement and by the proposed amendment, she had prayed for substitution for the earlier written statement incorporating new facts. So, at the stage of cross-examination, that is, when the examination-in-chief was over, if the amendment is allowed, the Plaintiff will be prejudiced.

7. Moreover, altogether withdrawal of the admission by the proposed amendment is not permissible at all. The proposed amendment is not also in the nature of explanatory statement in support of his earlier admission, but, altogether, a new story deviating from her earlier statement. The learned Trial has, therefore, rightly rejected the application for amendment of the written statement.

8. I have considered the decision of Sheo Prakash Kajaria and Anr. v. Shreelal Kajaria & Shreeram Kajaria and Ors. reported in 2010(4) CHN (Cal) 859 referred to by Mr. Roy in support of the amendment of the written statement. By referring this decision, Mr. Roy has submitted that the withdrawal of admission by way of amendment of the written statement is permissible, provided the Defendant is able to prove that the alleged admission was vitiated or the statement made by way of admission was not correct. It was further held that if the amendment is allowed, the Appellant would merely get the opportunity to prove that their predecessors did not relinquish his share without causing any injustice to the opposing Defendants. Thus, the learned Trial Judge was not justified in dismissing the application for amendment of the written statement. In the instant case, there is No. sound ground why the admission made earlier was to be withdrawn by the proposed amendment.

9. Moreover, as stated earlier, since evidence has been started and the Plaintiff has closed the evidence on his behalf and his cross-examination is going on, if the proposed amendment is allowed, the Petitioner is to suffer prejudice inasmuch as the evidence on behalf of the Plaintiff has been recorded on the basis of the

pleadings of both the parties already on record. Therefore, I am of the view that this decision will not be applicable in the instant situation. With due respect to him, I hold that the Defendant / Petitioner herein cannot be allowed to withdraw the admission made by her long time back.

10. Therefore, I am of the view that the impugned order should be sustained and that there is nothing to interfere with the impugned order. The revisional application fails to succeed.

11. It is, therefore, dismissed.

12. Considering the circumstances, there will be No. order as to costs.