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**(1998) 09 CAL CK 0032**

**Calcutta High Court**

**Case No:** Civil Revisional Jurisdiction C.O. No. 2505 of 1992

Sanjib Kumar Sanyal

APPELLANT

Vs

Shipping Corporation of India

RESPONDENT

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**Date of Decision:** Sept. 1, 1998

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 12 Rule 6, Order 6 Rule 17, 115

**Citation:** (1999) 1 CALLT 10

**Hon'ble Judges:** Dibyendu Bhusan Dutta, J

**Bench:** Single Bench

**Advocate:** Mr. Joytirmay Bhattacharya, Mr. Fazlul Haque and Mr. Jayanta Bhattacharya, for the Appellant; Mr. Arunava Ghosh and Mr. Pranab Kr. Bose, for the Respondent

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### **Judgement**

D.B. Dutta, J.

Heard the submissions of the learned counsels for both the parties and considered the averments made in the application, I am satisfied that sufficient grounds have been made out in the application for condonation of delay in preferring this revisional application.

Accordingly, the delay is condoned and the application for condonation of delay is allowed.

Re: An application u/s 115 of the CPC filed on 17.9.92.

The revisional application is taken up for hearing.

2. In this revisional application, the plaintiff of a suit for recovery of certain dues from his employer, has come forward to challenge an order whereby the trial court allowed the defendant/Opposite party to withdraw his admission on the question of entitlement of the petitioner to gratuity as well as medical reimbursement partially to the extent of Rs. 18,750/- Towards gratuity as against Rs. 20,000/- and Rs. 450/- towards medical re-embracement as against Rs. 500/-. The defendant/Opposite

party appears to have categorically admitted in his written statement the fact that the plaintiff/petitioner was entitled to gratuity to the extent of Rs. 18,750/ and medical reimbursement to the extent of Rs. 450/-. The defendant/Opposite party did not only make this admission in his written statement but also filed an application under Order 12 rule 6 of the CPC making the self-same admission even prior to the filing of the written statement and praying for passing of a part decree to the extent admitted under order 12 rule 6 of the Code of Civil Procedure.

3. By the proposed amendment of the written statement, the defendant/ Opposite party did in effect seek the leave of the court to withdraw the categorical admission made by him in this behalf in the written statement. The reason for such withdrawal, according to the defendant, is the fact that the court lacks jurisdiction to pass a decree in favour of the plaintiff so far as it relates to the amount claimed on account of gratuity.

4. It is submitted by the learned counsel for the defendant/opposite party that the plaintiff's claim for gratuity is hit by the mischief of the payment of Gratuity Act, 1972 and that the defendant's admission in this regard cannot operate as estoppel against the law. While allowing the proposed amendment the trial court has even gone to the extent of deciding the question as to whether the court has jurisdiction to entertain any suit relating to the payment of gratuity and it is because of such adjudication that the trial court was pleased to allow the amendment.

5. Now, the admission that was made on behalf of the defendant relates not only to gratuity but also to medical reimbursement. The claim for medical reimbursement cannot be said to be hit by the mischief of the Payment of Gratuity Act. Moreover, by the proposed amendment relates to the admission made in the written statement and not those made in the application that was filed Under Order 12 rule 6 of the CPC

6. The question whether the court has jurisdiction to decide the plaintiff's claim for gratuity would arise for decision at the appropriate stage and it is needless to comment that the said stage has not yet been arrived.

7. If the Civil Court's jurisdiction to grant a decree in respect of claim for gratuity is ousted by the provision of the Payment of Gratuity Act, the court would be incompetent to pass a decree in favour of the plaintiff despite the admission made in the written statement because there is no estoppel against law. But in case the trial court decides the question of Jurisdiction of this point in favour of the plaintiff, the plaintiff will be deprived of the right to bank upon the admissions that have already been made by the defendant/opposite party in the written statement.

8. In the facts and circumstances of the case, it is thus clear that the proposed amendment is likely to cause serious prejudice to the plaintiff.

The apex court in [Heeralal Vs. Kalyan Mal and Others](#), has held that amendment of the written statement cannot be allowed so as to dispossess the plaintiff's case and right to get a decree in case there is no jurisdictional bar to be entitled to a decree. Then again, it appears that the defendant/Opposite party has already pleaded in his written statement the fact that the suit is not maintainable. It is true that the defendant has not specifically pleaded in the written statement want of jurisdiction of the court to adjudicate the claim for gratuity but for doing so, withdrawal of the admission cannot be permitted to be made. The defendant may however, be granted liberty to file additional written statement pleading want of jurisdiction if there be any and as such it is really not understood how the proposed amendment in the form as prayed for by the defendant would be necessary for adjudication of the matter in controversy between the parties.

9. For the reason stated above, the impugned order is not legally sustainable and has to be set aside. It is accordingly hereby set aside.

10. The defendant/opposite party is, however, permitted to plead want of jurisdiction by filing an additional written statement. If he desires so to do.

11. The revisional application is, thus, disposed of without any order as to costs.

Let xerox copy of the certified copy of this order be given to the learned Advocates for the parties, if applied for, within seven days.

12. Application disposed of