

(2014) 02 CAL CK 0047

Calcutta High Court

Case No: C.O. No. 2116 of 2012

Renu Mallik

APPELLANT

Vs

Kalipada Das

RESPONDENT

Date of Decision: Feb. 21, 2014**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17
- Constitution of India, 1950 - Article 227

Citation: (2014) 5 CHN 509 : (2014) 3 WBLR 675**Hon'ble Judges:** Arindam Sinha, J**Bench:** Single Bench**Advocate:** Indranath Mukherjee, Advocate for the Appellant; Basudeb Gayen and Biswajit Dutta, Advocate for the Respondent

Judgement

Arindam Sinha, J.

This application under Article 227 of the Constitution of India is directed against order dated 4th May, 2012 passed in Title Appeal Case No. 98 of 2008 by the Court of the Civil Judge (Senior Division) at Howrah. The defendants/appellants in an eviction suit are the petitioners herein having preferred an appeal from a decree of eviction suffered by them. During the pendency of the appeal the petitioners took out two applications one for amendment of their written statement and the other to lead evidence in the appeal. The appeal is pending hearing and it is the contention of the petitioners, that the application for amendment has been taken up as an interlocutory application and decided by relying upon the amended provision of Order VI Rule 17 of the Code of Civil Procedure.

2. The petitioners have preferred the appeal, hearing of which is yet to take place. The learned Appellate Court in the matter of hearing the appeal might find that the decree is to be confirmed or modified or set aside or even in the circumstances that may be found, the learned Appellate Court might remand the matter for rehearing

on issues it might require. It is only in the event that an order of remand is made that the question might arise of amendment of pleadings. Therefore, it is clear that unless the appeal itself is taken up for hearing, neither the application for amendment nor the application for adducing additional evidence made by the petitioners can be adjudicated upon.

3. For the reasons aforesaid, the order impugned is set aside. The applications for amendment to the written statement and for adducing evidence in the appeal may be kept pending and taken up for hearing along with the appeal. The revisional application is allowed. Urgent certified photocopy of this order, if applied for, will be made available to the parties subject to compliance with all requisite formalities.