



2026 INSC 545

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No. .... of 2026  
(@ Special Leave Petition (C) No. 34411 of 2025)**

**Mondira Ghosh**

**... Appellant**

**versus**

**Chaitali Ghosh**

**... Respondent**

**J U D G M E N T**

**SANJAY KUMAR, J**

1. Leave granted.
2. The change of stand by the defendant, by way of an additional written statement filed at an advanced stage in the suit, is the cause for grievance in this appeal.
3. By the impugned judgment dated 03.09.2025, the Calcutta High Court permitted the same on payment of costs. Aggrieved thereby, the plaintiff in the suit is in appeal. By order dated 02.12.2025, this Court granted stay of further proceedings in the said suit.

4. Parties shall be referred to hereinafter as arrayed in the suit.
5. Title Suit No. 1527 of 2022 was filed by the plaintiff, Mondira Ghosh, before the learned X<sup>th</sup> Judge, City Civil Court at Calcutta, West Bengal, for a declaration that the defendant, Chaitali Ghosh, was in unlawful possession of the suit premises and seeking her eviction therefrom along with damages and costs. The defendant filed her written statement in the suit on 08.12.2022 wherein, she claimed that she was a *bonafide* co-sharer of the suit premises. She, accordingly, denied the plaintiff's claim and sought dismissal of the suit with costs.
6. Issues were framed in the suit on 17.05.2023. The trial commenced thereupon with examination of PW-1, who was thereafter cross-examined at length on 18.12.2023, 18.03.2024 and 24.07.2024.
7. At that stage, the defendant filed the subject application under Order 8 Rule 9 of the Code of Civil Procedure, 1908 (CPC), to permit her to file an additional written statement along with a counter claim. This application was rejected by the Trial Court, *vide* Order No.18 dated 17.06.2025. Therein, the Trial Court observed that the defendant had earlier claimed to be a *bonafide* co-sharer, whereas by way of the additional written statement, she now claimed that she was a tenant under the plaintiff. The Trial Court also noted that issues had been framed as long back as on 17.05.2023 and the trial had

already commenced. It was observed that a defendant in a suit could not be allowed to retract from the stand taken in the original written statement and bring in an altogether inconsistent case. Reference was made to Order 6 Rule 7 CPC, which posits that no pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same. The Trial Court, accordingly, dismissed the application with costs.

8. Aggrieved by the aforesaid order, the defendant filed C.O. No. 3172 of 2025 before the High Court under Article 227 of the Constitution of India. By the impugned order, a learned Judge of the High Court allowed the said application to the extent of permitting the additional written statement to be filed on payment of costs. Therein, the learned Judge observed that filing of a counter claim could be allowed even after framing of issues in exceptional cases but not when the trial had commenced. Noting that the counter claim was sought to be filed in the present case after cross-examination of the first witness for the plaintiff, the learned Judge held that the counter claim could not be taken on board.

9. However, insofar as the filing of the additional written statement is concerned, the learned Judge noted that the *proviso* to Order 6 Rule 17 CPC barred amendment of pleadings in the ordinary course after commencement

of the trial and the said provision would, therefore, operate against the defendant. The learned Judge further observed that there was substance in the argument advanced on behalf of the plaintiff that leave under Order 8 Rule 9 CPC should not be granted if the object thereof is to bypass the embargo stipulated in the *proviso* to Order 6 Rule 17 CPC.

**10.** Having stated the correct legal position thus, the learned Judge strangely went on to state that the contents of the proposed additional written statement of the defendant brought forth facts which would be necessary for the purpose of deciding the real controversy between the parties. He observed that a party should not be made to suffer if certain facts had inadvertently not been stated in the earlier written statement and if they are relevant for adjudication of the dispute. The learned Judge opined that the delay in seeking leave to file an additional written statement was satisfactorily explained by the defendant and permitted the additional written statement to be filed within a time frame, upon payment of costs of ₹15,000/-.

**11.** Order 8 Rule 9 CPC states that no pleading shall ordinarily be presented after the filing of a written statement unless it is by way of defence to a set-off or counter claim and allows the filing of an additional written statement only when the Court requires it. Viewed in that light, the learned Judge was not correct in opining that the defendant had failed to state certain

facts in the original written statement by inadvertence. This was not a case of a fact not having been stated in the written statement and that void being sought to be filled up by way of an additional written statement. On the other hand, the defendant wanted to completely change her stand with regard to her status and claim for being in possession. Earlier, she had stated that she was a *bonafide* co-sharer of the suit premises but by way of the additional written statement, she wanted to do a complete *volte-face* by claiming to be the tenant of the plaintiff. This retraction of her earlier stand and introduction of a totally inconsistent and contradictory stand by the defendant, in the guise of filing an additional written statement, was contrary to the mandate of Order 6 Rule 7 CPC.

**12.** Further, the very filing of such an application by the defendant, having failed to seek amendment of her written statement at the appropriate stage and after the trial in the suit had already commenced, was clearly an abuse of process. As noted by the learned Judge himself, this ploy was adopted to get over the hurdle raised by the *proviso* to Order 6 Rule 17 CPC, which would not have permitted the defendant to seek amendment of her written statement.

**13.** We are, therefore, of the opinion that the view taken by the Trial Court was fully justified on facts and in law and the learned Judge of the High Court

erred in reversing the same, insofar as acceptance of the defendant's additional written statement, is concerned.

**14.** The appeal is accordingly allowed, setting aside the order dated 03.09.2025 passed by the learned Judge of the Calcutta High Court in C.O. No. 3172 of 2025 and restoring Order No.18 dated 17.06.2025 passed by the learned X<sup>th</sup> Judge, City Civil Court at Calcutta, in Title Suit No. 1527 of 2022.

Parties shall bear their own costs.

Pending application(s), if any, stand disposed of.

....., J.  
**SANJAY KUMAR**

....., J.  
**K. VINOD CHANDRAN**

**May 26, 2026**  
**New Delhi.**