

**In the High Court at Calcutta
Commercial Division
Original Side**

Judgment (2)

**PRESENT :
THE HON'BLE JUSTICE ANIRUDDHA ROY**

**IA No.GA-COM/10/2025
[Old No. CS/242/2018]
In CS-COM/141/2024**

**DREDGING AND DESILTATION
COMPANY PRIVATE LIMITED
VS
M/S. MACKINTOSH BURN AND
NORTHERN EXPRESS CONSORTIUM
AND ORS**

**For the plaintiff : Mr. Sakya Sen, Sr. Adv.
Mr. Sankarsan Sarkar, Adv.
Mr. Sunil Kumar Singhania, Adv.
Ms. Kalpana Singhania, Adv.**

**For the defendant nos. 1 & 2: Mr. Mainak Bose, Sr. Adv.
Mr. Arnab Chakraborty, Adv.
Ms. Pragya Bhowmick, Adv.
Ms. Rimi Mondal, Adv.**

**For the defendant no.3 : Md. Dilawar Khan, Adv.
Ms. Apple Mughali Jimo, Adv.**

Heard on : June 23, 2026.

**Judgment on : June 23, 2026.
[In Court]**

ANIRUDDHA ROY, J :

FACTS:

1. This is an application filed by the **defendant nos.1 and 2** praying for amendment of written statement, already filed by the defendant nos.1 and 2 in the instant commercial suit.
2. The trial of the suit has not commenced.
3. By an order dated **January 7, 2020, Annexure 'B'** at **page 28** to the application, on the prayer of the plaintiff, the plaint has already been amended.
4. The stand of the plaintiff with regard to issuance of writ of summons in connection with the amended plaint would be available from its affidavit in opposition filed in the instant application and the same is quoted below:-

“Vii. On or about January 27, 2020 the amended plaint was lodged before the Registrar, Original Side, who, opined and referred to Chapter VIII Rules 8 and 9 of the Original Side Rules, which, stipulated that as the defendants had already entered appearance through their learned Advocates, service upon such Advocates would be good service and no fresh writ of summons was necessary. A copy of the writ of summons dated February 11, 2020, which was to be lodged with the Registrar, Original Side, is annexed hereto and marked with the letter 'B'.”

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Viii. Pursuant thereto, the amended plaint was served upon all contesting defendants through their learned advocates, vide letter dated February 11, 2020. A copy of the letter dated February 11, 2020 is annexed hereto and marked with the letter 'C'.”

5. The relevant observation with regard to issuance of fresh writ of summons insofar as the amended plaint is concerned, is also available from the judgment and order of the Coordinate Bench dated **April 7, 2021, Annexure 'D'** at **page 33** to the affidavit in opposition.
6. After the plaint was allowed to be amended, the defendant nos.1 and 2 (hereinafter, **the applicants**) had filed the instant application praying for amendment of their written statement on or about **July 15, 2025**. The prayers from the Master's Summons are quoted below:

“(a) Leave be given to defendant Nos. 1 and 2 to amend their written statement in the manner as indicated and delineated in Red Ink in a copy of the written statement annexed hereto and marked as Annexure-“I”.

(b) Leave may also be granted to bring on record the additional documents as Annexure to the Amended Written Statement in the manner indicated and

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delineated in Red Ink in a copy of the Written Statement annexed hereto and marked as Annexure-“I”.

- (c) *The Department of this Hon’ble Court be directed to carry out the amendments prayed for within a period of 3 weeks from the date of the Order to be made herein or within such time as this Hon’ble Court may deem fit and proper.*
- (d) *Leave be given to re-verify and re-affirm the Written Statement and appended thereto an affidavit of the newly authorized officer as per the amended provisions of the Code of Civil Procedure, 1908 and under the Commercial Courts Act, 2015, if necessary.*
- (e) *Such further or other Order or Orders be passed and/or direction or directions be given as this Hon’ble Court may deem fit and proper.”*

7. Parties have filed and exchanged their respective affidavits which are also on record.

SUBMISSIONS:

8. Mr. Mainak Bose, learned Senior Advocate appearing for the applicants/defendant nos.1 and 2 referring to the proposed amended written statement, annexed to the supporting affidavit, being **Annexure ‘I’** at **page 98** to the instant amendment

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application, submits that the amendments, prayed for, as indicated therein would not materially change the nature and character of the written statement, already filed but the same would indicate that in support of the defence, the amendments are sought for.

9. Mr. Mainak Bose, learned Senior Advocate further submits that the amendments, sought for, are only in respect of the original plaint prior to its amendment and he further submits, if these amendments are allowed, the same would also take care of the said amended plaint as well, though since the writ of summons has not been served upon the applicants in respect of the amended plaint, right to file written statement by them under the provisions of **Rule 1 to Order VIII of Code of Civil Procedure, 1908** (hereinafter, **the Code**), as amended, has not arisen in respect of the said amended plaint.
10. Learned Senior Advocate, Mr. Mainak Bose appearing for the applicants further submits that while adjudicating an application for amendment of written statement, the Court shall always take a liberal view and whatever grounds or whatever amendments are sought for should be allowed by the Court even an inconsistent plea, is also allowed to be incorporated to the written statement by way of amendment. In support, he has relied upon a decision of the Hon'ble Supreme Court ***In the matter of: Baldev Singh and Others vs.***

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Manohar Singh and Another reported at (2006) 6 Supreme Court Cases 498.

- 11.** Referring to the provisions laid down under **Rule 17 to Order VI of the Code**, learned Senior Advocate, Mr. Bose appearing for the applicants further submits that in view of the promulgation of the **Commercial Courts Act, 2015** (for short **CC Act**), no change or amendment has taken place in respect of Rule 17 to Order VI of the Code. Hence, the provision for amendment under the Code remains as it is and the defendant is entitled to amend its written statement accordingly and more so, in the instant suit trial has not yet commenced.
- 12.** Mr. Sakya Sen, learned Senior Advocate being ably assisted by Mr. Sankarsan Sarkar, learned Advocate appearing for the plaintiff has opposed the application vehemently. Mr. Sen, learned Senior Advocate submits that under the provision of Rule 2 to Order VI of the Code, written statement shall only state the material facts and not the evidence.
- 13.** He then refers to the proposed amendments sought to be carried out from the application and submits that the applicants are seeking to plead evidence by way of amendment, which is not permitted in law.

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14. Referring to various provisions from the Code after its amendment, in view of the promulgation of the CC Act like Rule 1 to Order VIII, Rule 10 to Order VIII, Rule 1 to Order V second proviso, Mr. Sen, learned Senior Advocate submits that even though there is no timeframe prescribed or no amendment has taken place under Order VI Rule 17 of the Code, in view of the enactment of the CC Act but the said provision for amendment should also have to be construed in consonance with and in the light of the amended provisions of the Code where strict rigors are created even for filing written statement and service of summons. If the defendant is allowed to carry out one after another amendment in its written statement, to come out of the rigors created under the Code, the purpose and object of the adjudication of the commercial suit will be defeated. Mr. Sankarsan Sarkar, learned Advocate appearing for the plaintiff submits that on mere asking, the defendant shall not be permitted to amend its written statement.

DECISION:

15. After considering the rival contentions of the parties and on perusal of the materials on record, it appears to this Court that the instant application for amendment of written statement has been taken out

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after the plaint had been amended. On perusal of the application and the prayers made therein, this Court finds that there is no prayer made by the applicants to amend its written statement in respect of the amended plaint. Inasmuch as, learned Senior Advocate, Mr. Mainak Bose appearing for the applicants has submitted that the applicants seek to amend its written statement, which has already been filed in respect of the original plaint and not in respect of the amended plaint. He further submits that when the writ of summons will be served upon the applicants in respect of the amended plaint, the right of the applicants will accrue to file an additional written statement in respect of the amended plaint. Mr. Bose, learned Senior Advocate has also submitted that if this amendment is allowed, as prayed for herein, the same will suffice in respect of the amended plaint also.

- 16.** Filing of written statement in a commercial suit is governed under Rule 1 to Order VIII of the Code, as amended after the promulgation of the CC Act. Amendment of pleading is governed under Rule 17 to Order VI of the Code, such provision has not been amended in view of the promulgation of the CC Act. Therefore, any application for amendment of plaint or written statement shall be governed under the existing provisions of Rule 17 to Order VI of the Code.

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- 17.** The golden rule of law is that when a particular provision has been provided for under the statute to do a thing in a particular manner, the thing has to be done in that manner only or not at all. All other modes are expressly forbidden. After enactment of the CC Act, various provisions of the Code have been amended in the light of the object and purpose of the CC Act but the provision laid down under Rule 17 to Order VI of the Code has not been amended. Therefore, if any pleading filed by the parties is sought to be amended, such party must avail of the provisions of amendment, as laid down under the existing Rule 17 to Order VI of the Code or not at all. The only restriction in the said provision is that amendment is permitted before the trial begins. There is also no bar or restriction imposed under the said provision with regard to the number of amendments. Therefore, parties to a proceeding are free to apply for amendment of their respective pleadings whenever they want, if it is otherwise permitted within the framework of law and subject to the restriction imposed under Rule 17 to Order VI of the Code.
- 18.** While considering an application for amendment of a plaint, the tests under adjudication are more rigorous and stricter than considering an application for amendment of written statement. Plaint is the foundation of an action. It is the prerogative of the plaintiff how it will frame the plaint and its cause of action. Only

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after the plaint is filed, the defendant will get an opportunity to file its written statement to deal with the plaint case. In the process, if the defendant comes up with irrelevant defence or statements in its written statement or in the amended written statement, the same shall be tested at the time of trial and if the Court is of the opinion ultimately, that the defence taken or any part of it in the written statement is irrelevant or not material or not tenable qua the cause of action and the case made out in the plaint, the Court may reject such plea/defence of the defendant, at the time of trial.

19. In the matter of: Baldev Singh and Others (Supra), the Hon'ble Supreme Court had observed as under:

“9. Keeping this principle in mind, let us now consider the provisions relating to amendment of pleadings. Order 6 Rule 17 of the Code of Civil Procedure deals with amendment of pleadings which provides that 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. A bare perusal of this provision, it is pellucid that Order 6 Rule 17 of the Code of Civil Procedure consists of two parts. The first part is that the Court may at any stage of the proceedings allow either party to amend his pleadings and the second

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part is that such amendment shall be made for the purpose of determining the real controversies raised between the parties. Therefore, in view of the provisions made under Order 6 Rule 17 of the CPC it cannot be doubted that wide power and unfettered discretion has been conferred on the Court to allow amendment of the pleadings to a party in such manner and on such terms as it appears to the Court just and proper. While dealing with the prayer for amendment, it would also be necessary to keep in mind that the Court shall allow amendment of pleadings if it finds that delay in disposal of Suit can be avoided and that the suit can be disposed of expeditiously. By the Code of Civil Procedure (Amendment) Act, 2002 a proviso has been added to Order 6 Rule 17 which restricts the Courts from permitting an amendment to be allowed in the pleadings either of the parties, if at the time of filing an application for amendment, the trial has already commenced. However, Court may allow amendment if it is satisfied that in spite of due diligence, the party could not have raised the matter before the commencement of trial. So far as proviso to Order 6 Rule 17 of the Code of Civil Procedure is concerned, we shall deal with it later.

11. *A bare perusal of the order rejecting the application for amendment of the written statement indicates that while rejecting the application for amendment of the*

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written statement, the High Court as well as the trial court based their decisions mainly on three grounds. The first ground was that since the appellants had made certain admissions in the written statement, its amendment cannot be allowed permitting the appellants to withdraw their admission made in the same. Secondly, the question of limitation cannot be allowed to be raised by way of an amendment of the written statement and lastly inconsistent pleas in the written statement cannot also be allowed to be raised by seeking its amendment.

13. *In view of this decision, it can be said that the plea of limitation can be allowed to be raised as an additional defence by the appellants. Accordingly, we do not find any reason as to why amendment of the written statement introducing an additional plea of limitation could not be allowed. The next question is that if such amendment is allowed, certain admissions made would be allowed to be taken away which are not permissible in law. We have already examined the statements made in the written statement as well as the amendment sought for in the application for amendment of the written statement. After going through the written statement and the application for amendment of the written statement in depth, we do not find any such admission of the appellants which*

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was sought to be withdrawn by way of amending the written statement.

15. *Let us now take up the last ground on which the application for amendment of the written statement was rejected by the High Court as well as the Trial Court. The rejection was made on the ground that inconsistent plea cannot be allowed to be taken. We are unable to appreciate the ground of rejection made by the High Court as well as the Trial Court. After going through the pleadings and also the statements made in the application for amendment of the written statement, we fail to understand how inconsistent plea could be said to have been taken by the appellants in their application for amendment of the written statement, excepting the plea taken by the appellants in the application for amendment of written statement regarding the joint ownership of the suit property. Accordingly, on facts, we are not satisfied that the application for amendment of the written statement could be rejected also on this ground. That apart, it is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. It is true that some general principles are certainly common to both, but the rules that the plaintiff cannot be allowed to amend his pleadings so as to alter materially or*

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substitute his cause of action or the nature of his claim has necessarily no counterpart in the law relating to amendment of the written statement. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in the case of amendment of written statement, the courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case.

16. *This being the position, we are therefore of the view that inconsistent pleas can be raised by defendants in the written statement although the same may not be permissible in the case of plaint. In the case of M/s. Modi Spinning and Weaving Mills Co.Ltd. & Anr. Vs. M/s. Ladha Ram & Co. [(1976) 4 SCC 320], this principle has been enunciated by this Court in which it has been clearly laid down that inconsistent or alternative pleas can be made in the written statement. Accordingly, the High Court and the Trial Court had gone wrong in holding that defendants/appellants are not allowed to take inconsistent pleas in their defence.*

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*

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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.

18. For the reasons aforesaid, we are of the view that the High Court as well as the trial court erred in rejecting the application for amendment of written statement. Accordingly, the orders of the High Court and the trial court are set aside, the application for amendment of written statement is allowed. The defendants/appellants are directed to file an amended written statement within a period of one month from the date of production of this order before the trial court positively. Considering the facts and circumstances of this case, we direct the trial court to dispose of the suit within a period of one year from the date of

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communication of this order to it. The appeals are allowed. There will be no order as to costs.”

- 20.** The Rule of amendment of written statement also has an exception that if an admission is made by the defendant qua the case and the claim made out in the plaint, by way of an amendment, the defendant shall not be allowed and permitted to withdraw or delete such admission from the written statement.
- 21.** In the light of the above, considering the proposed amendment, cited in the proposed amended written statement, annexed to the application, this Court is of the firm and considered view that the amendments, sought for, can be allowed and accordingly, the amendments, sought for, in the proposed amended written statement stand **allowed**.
- 22.** It is made clear that this Court has not expressed any opinion on the rival contentions of the parties on the merits of the suit or on the merits of the defence of the applicants and the fate of those will abide by the final trial of the suit, in accordance with law.
- 23.** Insofar as the amended plaint is concerned, leave is granted to the plaintiff to lodge the writ of summons, positively within **four weeks** from date.

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- 24.** The concerned department shall take all necessary steps for service of writ of summons, in accordance with law forthwith, immediately after the writ of summons is lodged by the plaintiff.
- 25.** The amendments, as allowed herein, shall be carried out positively within **six weeks** from date by the department, upon compliance of all necessary formalities by the applicants/defendant nos.1 and 2, in every respect including reverification of the written statement and the reaffirmation of affidavits, wherever it is required, in accordance with law.
- 26.** With the above observations and directions, the instant application being **IA No. GA-COM/10/2025** stands **allowed**, without any order as to costs.

(ANIRUDDHA ROY, J.)

RS/Sbghosh

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