

Title Suit 1708 of 2025

Order Dated: 09.06.2026

The date is fixed today for hearing of the three applications one is u/Ord. 39 Rule 4 r/w Sec. 151 of CPC, another u/Ord. 39 Rule 7 r/w Sec. 151 of CPC and the other u/s 151 of CPC filed by the proforma defendant no.3.

Plaintiff and the Proforma Defendant no.2 and 3 files hazira and is duly represented.

No steps is taken by the defendant no.1.

The application filed by the Proforma defendant no.3 under Order 39 Rule 7 r/w Sec. 151 of CPC is now taken under consideration for hearing.

The Ld. Advocate for the Proforma defendant no.3 submitted that the plaintiff has filed the instant suit against the defendants for Declaration and Permanent Injunction alleging that the plaintiff was inducted as tenant in respect of the suit property by virtue of Agreement Dated 01.05.1982 executed by the owner of the suit property and the plaintiff has been continuously depositing the rent in respect of the suit property and is in possession of the suit property till date but the defendant no. 1 i.e., the Co-operative Society under which the suit property is situated is disturbing the peaceful possession of the plaintiff and hence the plaintiff filed the instant suit with a prayer for a declaration that the plaintiff has right and interest to occupy the suit property and a permanent injunction restraining the defendant no.1 and their men and agents or assigns from dispossessing from the suit property and other consequential reliefs. It was further submitted by the Ld. Advocate for the proforma defendant no.3 that the plaintiff was inducted in the suit property as a tenant but after the expiry of the tenancy agreement vacated the suit property and the proforma defendant no.3 took possession of the said flat and found the same in dilapidated condition and started renovation work over the suit property and in the meantime the plaintiff deliberately and intentionally for occupying the suit property and filed the instant suit and obtained order of Police Help and as well as ad interim injunction order misleading this Court. After the passing of ad interim injunction order by this Court the plaintiff has put his lock over the lock of the proforma defendant no.3 in the suit property and even the repairing work of the suit property is lying incomplete due to which the suit property is being damaged. The suit property was dugged up by removing all the floor and tiles and sudden rain is gathering in the floor severely damaging the floor and for which the inhabitants of the flat are making complaints as because their roofs is being damaged due to water logging in the floor of the suit property. Hence the completion of the repairing work for protecting the suit property from further damages is necessary. Ld. Advocate for the proforma defendant no.2 further contended that holding a local inspection work on the points as per the schedule of the said application under consideration is

necessary for the purpose of proper adjudication over the dispute in controversy by and between the parties and also for the purpose of bringing the clear picture of the suit flat before the Ld. Court.

Therefore, under the above circumstances, the proforma defendant no.3 has filed the instant application under consideration praying for an order for appointment of a Pleader Commissioner to hold local inspection commission work in respect of the suit Schedule flat as mentioned in the plaint, on the points written in the schedule appended to the present application under consideration.

Per contra, the Ld. Advocates on behalf of the plaintiff has not raised any specific objection against the application of the proforma defendant no. 3 and further submitted that the plaintiff has no objection if the renovation work of the suit flat is completed by the proforma defendant no.3.

Heard the submission put forth by the Ld. Advocates for both the parties.

Perused the said application under consideration and the case record. Considered.

It is the settled principle of Law under Order XXXIX Rule 7 of CPC that a local inspection is necessary for the detention, preservation or inspection of any property which is the subject matter of the suit or as to which any question may arise therein. Now it is needed to be mentioned here that the purpose of local inspection is not only to collect the evidence but also to obtain the full information or evidence in respect of the suit property.

Bearing the principle of law in mind and also after perusing the schedule noted points as per the said petition under consideration it appears to this Court that for bringing the clear picture of the suit property, holding of the commission work is necessary for the purpose of proper adjudication of the instant suit and specially when the plaintiff who is the master of this suit has not raised any specific objection against the petition of the proforma defendant no.3 under consideration and agreed to the completion of the renovation work by the proforma defendant no.3. As such the Court is of the thoughtful opinion that a commission work, for determining the nature and extent of renovation work to be done of the suit flat before proceeding with the case further, is very much necessary. Therefore, in respect of the present application under consideration this Court finds no reason in disallowing the same at this stage.

In the premises above and on perusing the case record the Court finds that there is no impediment in allowing the said application under consideration for the purpose for determining the nature and extent of renovation work to be done in respect of the suit flat and also for the purpose of preservation and protection of the suit property, the said application is to be allowed.

Thus, having consider the same, the Court inclines to allow the prayer of the proforma defendant no.3 made in the application under Order XXXIX Rule 7 read with Section 151 CPC dated 15.12.2025 at this stage.

Hence, it is

ORDERED,

*That the application filed by the proforma defendant no.3 under **Order XXXIX Rule 7 read with section 151 CPC dated 15.12.2025 is allowed.***

*Let, Ld. Advocate Anirban Das **be appointed as the Pleader/Advocate Commissioner** in this suit. He shall conduct his work of local inspection on points as given in the schedule below to the application dated 15.12.2025 under order XXXIX Rule 7 read with section 151 CPC filed by the defendant.*

The commissioner shall give notice to both the parties and their Ld. Advocates before visiting the locale for the purpose of conducting the local inspection work. It is further hereby directed that the Ld. Pleader/ Advocate Commissioner shall conduct his commission work as per the schedule mentioned points in presence of both the parties.

*The proforma defendant no.3 is directed to make the **payment of Rs. 7,000/- to the Ld. Pleader/Advocate Commissioner** within the period of 15 days from the date of passing of this order, as his fees.*

The Office of the Nazareth, Alipore is directed to issue writ immediately after such payment is made.

The hearing of the application under Order 39 Rule 4 of CPC and petition under 151 of CPC is kept in abeyance.

*Fix 20.08.2026 for **report of the commissioner** and for **payment of cost** by the proforma defendant no.3 in terms of the aforementioned order.*

Thus, the application dated 15.12.2025 under order XXXIX Rule 7 read with Section 151 CPC filed by the proforma defendant no.3 is disposed of on merits.

DA is directed to make entry in CIS.

Dictated and corrected by me.

Civil Judge (Jr. Divn) 3rd Addl. Court, Alipore
J.O. Code WB01569

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