

COMMERCIAL COURT AT ASANSOL

**(FOR THE DISTRICTS OF MURSHIDABAD, BIRBHUM, PURBA BARDHAMAN,
PASCHIM BARDHAMAN, PURULIA AND BANKURA)**

Present : Shaikh Kamal Uddin.
Judge, Commercial Court at Asansol.

JO Code : WB01311.

Money Suit (Commercial). : 30/2024

CNR No. : WBBD17-000009-2022

M/S. J.K. Construction.

..... Plaintiff.

V/s.

M/S. Global Construction & 4 Ors.

..... Defendant (s).

Order No - 49

Dated – 06/05/2025

1. Today stands fixed for passing order on the application under Order XXXIX Rule 7 read with Section 151 of the CPC filed by the added defendant being I.A No.11 of 2025 dated 12/03/2025.
2. The plaintiff filed the suit against the defendants for recovery of money and damages valued at Rs.3,42,74,793.34/- allegedly on the ground that the defendants have failed to make the payments for the constructions works carried out by the plaintiff in terms of the agreement date 04/12/2013 and work order dated 10/12/2013.
3. The original defendants did not file written statement within time and accordingly they were non-suited. Subsequently, in an application under Order I Rule 10 of the CPC, the added defendant was added as a defendant to the suit. The added defendant filed written statement denying that the entire work had been completed as claimed by the plaintiff and has come up with the present application under Order XXXIX Rule 7 of the CPC.

4. It is submitted by the Ld. Advocate for the added defendant that the plaintiff has not completed the construction in the building in question and therefore for the purpose of proper adjudication of the suit a local inspection of the said building is required to be held by appointing an Advocate Commissioner to ascertain the claim of the plaintiff.
5. No written objection has been filed by the plaintiff. However, at the time of argument Ld. Advocate for the plaintiff submitted that the present application is not maintainable and has been filed for fishing out evidence which is not permissible in law.
6. Heard the Ld. Advocates.
7. The suit is for recovery of money allegedly due to the plaintiff and which has allegedly been withheld by the defendants inspite of the fact that the plaintiff had completed the entire work including the extra work as per designs, drawings and instructions of the defendants. The added defendant has disputed that the work has been completed by the plaintiff.
8. Order XXXIX Rule 7 of the Code of Civil Procedure enables the court to order detention, preservation or inspection of any property which is the subject matter of the suit and for the said purpose Order XXXIX Rule 7 the court can authorize any person to enter upon any such property in order to record the existing condition of the property. It is true that it is not the object of Order XXXIX Rule 7 to assist a party to collect evidence. However, court cannot prevent a party from adducing the best evidence, if such evidence can be gathered with the help of a Commissioner. The controversy is whether the plaintiff had completed the construction work in its entirety or not. The only way to ascertain such facts is to have the building inspected by a competent Commissioner. Refusal of the prayer of the added defendant to appoint an Advocate Commissioner to make local inspection of the building in my considered view will amount to failure of exercise of jurisdiction vested in the court.

9. Accordingly, the application under Order XXXIX Rule 7 read with Section 151 of the CPC filed by the added defendant being I.A No.11 of 2025 dated 12/03/2025 is allowed.
10. **Mr. Debmalya Chatterjee**, (Mob No.9732080210) Ld. Advocate is appointed as an Advocate Commissioner for holding a local inspection on the points has mentioned in paragraph No.6 of the application under Order XXXIX Rule 7 of CPC filed by the added defendant. The remuneration of the Advocate Commissioner is fixed at Rs.10,000/- to be paid by the added defendant. The added defendant is directed to hand over a copy of the application under Order XXXIX Rule 7 of CPC containing the points of inspection to the Advocate Commissioner. The Advocate Commissioner shall file report on **17/06/2025**.

To date (**17/06/2025**) for **filing report**.

D/C by me.

Judge, Commercial Court
Asansol

Judge, Commercial Court
Asansol