

T.S. - 824/22 CNR – WBCC0103800-2022

Present: Sri Jayanta Koley, Judge, Bench-II. (WB00562)

Order 18

16.4.24

Today is fixed for hearing the injunction application as well as the application u/o 39 Rule 7 read with Order 26 Rule 9 CPC filed by the plaintiff.

Both the sides file haziras. Plaintiff files a petition praying for extending the force of ad-interim order of temporary injunction passed in this suit. Defendant files affidavit in opposition against the application u/o 39 Rule 7 read with Order 26 Rule 9 CPC. Copy has been served.

Heard the Ld. Advocates for both the sides.

Perused the application whereby the plaintiff has prayed for passing necessary order to appoint an advocate commissioner to inspect the suit premises and to hold commission work in terms of the points mentioned in the schedule to the said application on the ground that a report of commission work in that respect is very much necessary to elucidate the matter in dispute and to bring the present picture before this court for avoidance of any possible complication or confusion in future.

The defendant has resisted and contested the said application by filing her WO denying all the material allegations contained therein and has prayed for rejection of the same mainly on the ground that a report of commission as sought for is not at all necessary as the defendant has never done anything to change the nature or character of her business while this suit is not an ejection suit for eviction of the defendant.

It appears that the instant suit is one for declaration, injunction and other consequential reliefs brought by the plaintiff claiming herself to be the landlady of the defendant in respect of the suit premises on the allegations that the defendant, without taking her permission, is

attempting to install colouring xerox machine and other spray colouring machines in the suit premises which will create pollution and injury to local people. The plaintiff is enjoying an ad-interim order of temporary injunction restraining the defendant from installing any machinery of colour spray in the suit premises which may cause pollution or render the atmosphere unhealthy for the inhabitants of the locality.

In view of the nature of dispute involved in this suit between the parties and to avoid possible future complication or confusion, I am of the view that a present picture of the suit property will be of much help to this court. However the points on which the commission work has been sought for are not really required for the purpose of this suit and moreover those appear to be beyond this scope and / or ambit of the Advocate Commissioner.

Considered as above, I am of the view that the application of the plaintiff may be allowed subject to modification of the points for local inspection commission.

Hence it is

Ordered

that the application of the plaintiff u/o 39 Rule 7 read with Order 26 Rule 9 CPC is hereby allowed on contest subject to the modification that the local inspection commission work is to be conducted only to ascertain the following : -

- (1) the nature and character of the suit premises including the nature of business carried on therein;
- (2) the particulars of the machinery installed in the suit premises; and
- (3) any other local feature that may be pointed out by the parties and / or their Ld. Advocates at the time of holding the commission work.

Let Sri Debnath Ganguly (9038044492) Advocate be appointed as the Ld. Advocate Commissioner to hold local inspection commission in terms of the points as mentioned above after serving notice upon both the sides well in advance. The plaintiff is directed to make payment of a sum of Rs 5000/- on account of fees of the Ld. Advocate Commissioner fixing 16.5.24 for submission of report of local inspection commission.

Writ will be issued after payment of such fees.

The force of ad-interim order of temporary injunction is extended till that date.

D/c by me

Judge

Judge 2nd Bench