

EJECTMENT SUIT NO. 47 OF 2022
C.N.R No. WBPS01-000065 - 2022

IN THE COURT OF 4TH BENCH, PRESIDENCY SMALL CAUSE
COURT, CALCUTTA.

PRESENT: SMT. ARCHITA SEN, JUDGE, BENCH-4, PRESIDENCY
SMALL CAUSE COURT.

ORDER NO- 28
DATED 05.11.2024:

Today is fixed for hearing of the petition dated 12/09/2022 filed by the plaintiff and the petition dated 30/08/2024 filed by the plaintiff. Both the parties file separate attendance through their respective Ld. Advocates.

Ld. Advocate for the defendant submitted that the copy of the petition dated 30/08/2024 has not been served upon him, for which he is not in a position to file any written objection against that petition.

The plaintiff is directed to served the copy of the petition dated 30/08/2024 upon the defendant.

Now the record is taken up for hearing of the petition dated 12/09/2022 under section 151 of CPC filed by the plaintiff.

Heard both sides. Perused the record including the petition dated 12/09/2022 and the written objection against that petition.

Considered.

It is alleged by the plaintiff that the defendant and his family members are forcefully occupying the common corridor including the common staircase on the 2nd floor and the defendant has fixed a water tap in the tenanted room and a water pipe which is hanging from the 2nd floor verandah without the consent of the plaintiff. Not only that the defendant has constructed a drainage system on the landing of 2nd floor staircase by digging a pit and fixing a connected pipe with the main sewerage of the suit premises. The defendant is using it as bath cum privy for which damage is being caused to the suit premises and water is falling over the staircase which creates obstruction in the use of the staircase. In spite of several requests the defendant and his family members did not stop using the landing of the 2nd floor staircase as bath cum privy in spite of the fact that there are two bath cum privy at the ground floor which are commonly used by the other tenants. So the plaintiff prayed for an Order directing the defendant to remove the water tap including the water pipe line on the landing of the 2nd floor staircase and / or not to use the 2nd floor staircase landing as bathroom.

The defendant has filed written objection against the said petition and denied each and every allegation made by the plaintiff. It is submitted on behalf of the defendant that the original owner of the property inducted him as tenant in respect of one room with common user of bath and privy on the 2nd floor. In fact the plaintiff and his wife have put lock on the gate of bath cum privy on the 2nd floor and blocked the water passing through cistern, for which rain water logged on the roof and flow through on the staircase. They also blocked the access of the roof by installing iron gate. In this way they are trying to compel the tenants to vacate the tenanted premises. It is stated by the defendant that he has not constructed or installed anything. The existing system is continuing since prior to his induction. The defendant never used common passage or staircase as bath cum privy.

Though it is submitted on behalf of the plaintiff that the existence of the alleged bath cum privy on the landing of the staircase on the 2nd floor can be seen from the report of the commissioner, but on perusal of the commissioner's report it can be seen that there is the mentioned of only one bath cum privy on the 2nd floor which is exclusively used by the plaintiff. At this stage of the suit this Court cannot ascertain whether there is actually the existence of the water tap, water pipe line or any other fittings necessary for the bath cum privy at the landing of the 2nd floor staircase or not. There is no whisper in this regard in the commissioner's report. So the allegation of the plaintiff regarding the construction of drainage system, fixing water tap and water pipe line at the landing of the

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2nd floor and using the said place by the defendant as bath and privy remained limited to the plaint and instant petition only. Even if this Court believes the version of the plaintiff that such construction of the bath and privy exists at the landing of the 2nd floor staircase, then also there is nothing within the record which will help the Court to decide whether those arrangement was existed since the time of induction of the defendant at the suit premises or it was made subsequently and if so who is responsible for such arrangements. So at this nascent stage of the suit if this Court allows the prayer of the plaintiff directing the defendant to remove the water tap, water pipe line and other fittings from the landing of the 2nd floor staircase, it will tantamount to prejudging the suit, which is not at all desirable. As such the instant petition has no merit, thus deserves to be rejected.

Accordingly it is

O R D E R E D.

That petition dated 12/09/2022, filed by the plaintiff is rejected.

The petition dated 12/09/2022 is thus disposed of on contest and any order as to cost.

To 19/12/2024 for hearing of the petition dated 30/08/2024.

Typed,corrected and printed by me:

Judge, Bench-4
P.S.C.C, Calcutta
J.O Code WB01174

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