

EJECTMENT SUIT NO. 146 OF 2008 [1386/2014]

C. N. R. NO. WBPS01-000169 - 2008

Before Smt. Leena Sharma, Ld. Judge, 5th Bench.

ORDER NO. 75 DATED 09.08.2021

Today is fixed for passing order.

Both parties have filed their respective haziras.

One petition filed on behalf of the defendant praying for filing further written objection against the petition of the plaintiff filed under Or.39 R.7 of C.P.C.

Ld. Advocate for the defendant has submitted that the defendant is required to file further written objection against the application under Or.39 R.7 read with Sec.151 of C.P.C. on 09.04.2019 filed by the plaintiff. He prayed to allow the petition to file further written objection by the defendant against the instant petition.

Ld. Advocate for the plaintiff has raised strong objection to the instant prayer of the defendant and submitted that the matter of the petition was already heard by the Court after complete hearing of both sides on 22.03.2021. He prayed for rejection of the prayer of the defendant to file further written objection against the petition filed by the plaintiff under Or.39 R.7 read with Sec.151 of C.P.C. on 09.04.2019 as it is nothing but to harass the plaintiff and to drag the disposal of the matter.

Perused the record.

It appears from the record that the application under Or.39 R.7 read with Sec.151 of C.P.C. was filed on 09.04.2019 and thereafter, written objection against the same was filed by the defendant on 22.07.2019. Thereafter, on 22.03.2021, the instant petition and the written objection was heard in full in presence of ld. Advocates for both sides and after completion of hearing, the case record has been fixed for passing order. At this stage, defendant has filed the petition for filing further written objection against the application under Or.39 R.7 read with Sec.151 of C.P.C. on 09.04.2019 filed by the plaintiff. Thus, it appears that the petition of the defendant is nothing but intended to delay the proceeding of the suit.

Considering all, Court finds no merit in the instant petition and the petition filed today by the defendant is considered and rejected accordingly.

The record is taken up for order.

ORDER NO. 75 contd.

Ld. Advocate appearing for the plaintiff, through his application under Or.39 R.7 read with Sec.151 of C.P.C. dated 09.04.2019, has submitted that the instant suit has been filed on the ground of reasonable requirement of the plaintiff and their family members etc. That the defendant has damaged the floors, walls and windows of the suit premises by installation of heavy machineries and has made unauthorized construction at the suit premises. That the defendant is guilty of act of waste, negligence and default resulting material deterioration of the condition of the suit premises. As such, to ascertain the actual accommodation available to the plaintiff and the defendant as well as the present condition of the suit premises, it is necessary to appoint an Advocate Commissioner for having local inspection of the suit premises. That the plaintiff will bear all the costs of commission work. She prayed for allowing the instant petition for inspection of the suit premises regarding the points mentioned in the instant petition. He has submitted that the following are the points of local inspection such as :-

a) To note down the extent of Plaintiff's accommodation at premises no.39, Mirza Ghalib Street, P.S.Park Street, Kolkata -700016 by noting down the measurement of the rooms and the mode of user thereof;

b) To note down the defendant's accommodation at the premises no. 39, Mirza Ghalib Street, P.S.Park Street, Kolkata -700016 by noting down the measurement of the room and the mode of user thereof;

c) To note down any other feature or features that would be pointed out by the parties or their Ld. Advocates.

On the other side, Ld. Advocate for the defendant through his written objection dated 22.07.2019 has raised strong objection to the instant petition of the plaintiff and prayed for rejection of the same.

ORDER NO. 75 CONTD.

Perused the petition dated 09.04.2019 filed by the plaintiff under Order 39 Rule 7 of CPC, written objection and materials on record.

Considering submissions of ld. Advocates for both sides and the materials on record it appears to the Court that the instant petition dated 09.04.2019 has substance to allow as the plaintiff has made out a case for inspection of the suit premises in view of the instant application. So, a local inspection Commissioner should be appointed only for the purpose of bringing on record the actual possession and situation of the suit property.

Hence, it is,

ORDERED

that, the instant petition dated 09.04.2019 under order 39 Rule 7 of C.P.C. is hereby allowed on contest and the same is accordingly disposed of without any order as to cost.

Let Ld. Advocate Sri SANDIP CHATTERJEE (from the panel of Advocates recommended by Presidency Small Cause Court Bar Association, Kolkata) be appointed as a local Inspection Commissioner for ascertaining and submitting his report in respect of the points mentioned in the instant petition.

Plaintiff is directed to deposit a provisional amount of cost of commission to the tune of Rs. 7,000/- positively on 18.09.2021.

Ld. Commissioner is directed to hold commission work after serving notice to both sides and after complying with all other necessary legal formalities required in this behalf and to submit his report on date fixed after payment of the cost by the plaintiff on the next date.

Issue writ after cost be paid by the plaintiff. Plaintiff to file requisites accordingly.

Thus, the petition dated 09.04.2019 and the petition filed today both are disposed of.

Fix 18.09.2021 for payment/deposit of commission cost and further order.

DICTATED AND CORRECTED BY ME,

JUDGE

JUDGE
[5TH BENCH]
J.O. Code No. WB01006.