

EJECTMENT SUIT NO. 26 OF 2015
C. N. R. NO. WBPS01-000155-2015
Before Smt. Leena Sharma, Ld. Judge, 5th Bench.

ORDER NO. 56 DATED 09.08.2021

Today is fixed for further hearing of the petition dated 10.09.2020 and 10.02.2021.

Both parties filed their respective haziras.

Ld. Advocates for both sides are present.

The record is taken up for hearing of the petitions dated 10.09.2020 and 10.02.2021.

Perused the petitions dated 10.09.2020 of the plaintiff and 10.02.2021 of the defendants, W/O dated 10.02.2021 of the defendants against the petition dated 10.09.2020 and the materials on record.

Heard ld. Advocates for both sides.

Ld. Advocate for the plaintiff has submitted that on 10.09.2020, one application was filed on behalf of the plaintiff submitting that on 05.09.2020, plaintiff came to know that there was a construction work going on by the defendants and in spite of several requests made by him, defendants did not stop their work rather threatened him with dire consequences. That during pendency of the present suit, defendants are trying to make addition and alteration changing the nature and character of the suit premises. So, it is prayed to pass an order restraining the defendants from making any unauthorized construction or addition and alteration or changing the nature and character of the suit premises. He has further submitted that, however, no written objection has been filed against the petition dated 10.02.2021 filed by the defendants, which is co-related with this petition, has been filed by the defendants to continue the unauthorized construction work as already contended by the plaintiff, the petition dated 10.02.2021 is liable to be

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rejected. He has submitted that the defendants cannot go beyond his tenanted premises and make any repair work beyond such limits. He has submitted that one print copy of the photograph of the suit premises has been filed with his petition showing that the defendants has constructed a wall over the suit premises which is an unauthorized construction.

On the other side, Id. Advocate for the defendants has submitted through W/O dated 10.02.2021 against the petition of the plaintiff dated 10.09.2020 that the suit premises is an old one storied building and due to natural wear and tear, a portion of it has become dilapidated. That due to recent cyclone 'AMPHAN', the building was more damaged. On 05.09.2020, the Northern side building wall of the suit building which has seggregated from a lane all on a sudden fell and blocked on Marquis Lane, which is a busy lane. The defendants, thereafter, immediately went to K.M.C. for relevant permission but it was a Saturday. So, the office was found closed. Thereafter, to save the passerby, defendants appointed a labour so that sand and cement can be applied in between the bricks in order to give it a strong binding. Thus, the defendants had only repaired the boundary wall to protect the possessor from any injury. That on 08.09.2020, defendants narrated the incident to the concerned department and the K.M.C. immediately issued permission on written request. That the written request and permission of K.M.C. are annexed with the petition as Annexure-A. That the defendants had only repaired the boundary wall for preventing any future danger. That the defendants did not make any unauthorized construction as pleaded by the plaintiff. So, he prayed for rejection of the petition of the plaintiff dated 10.09.2020. He has further submitted that on 10.02.2021, an application was filed on behalf of the defendants

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praying to allow them to repair the suit property as per schedule of repairing mentioned therein. He has submitted that chunks of plasters are falling from the wall and ceiling which may injure the defendants and their family members. That the boundary wall are damaged and might fall on any time and cause injury to the passerby. That cracks have been developed on the floor causing great difficulty to the defendants as well as their family members. That it is very essential in nature to make repair work for the safety and security of human life but not the luxury desire of the defendants. He has submitted that the whole premises no.13 Marquis Lane, P.S. New Market, Kolkata-700016 is the suit premises. He has submitted that all the costs of such repairment work should be borne by the defendants. So, he prayed for allowing petition dated 10.02.2021 in view of the schedule mentioned therein for ends of justice. He has relied upon **C.O. No. 590 of 2006** regarding jurisdiction of the present Court. He has submitted that some photographs of the suit premises have been filed along with his petition and submitted further that the photographs submitted by the plaintiff's side is not disclosing the real picture properly.

Before going for further discussion, Court considers it proper to note that the suit is pending before the present Court and that the present Court is seisin of the suit and the application for repair has been made before the Court during pendency of the suit. As such, the bar of Sec.44 of the Act of 1997 shall not apply and the matter can well be entertained by the present Court.

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It is to be noted here that the replacement of any parts including floors or roof or internal walls, which become defective or dangerous owing to lapse of time or the effect of elements, are repaired [**AIR 1958 Mysore 77**].

In **AIR 1975 Gujarat 36**, it was held that if one of the four walls of the tenanted house fell down on account of rent or other external cause, it will be tenantable repair.

From the above discussion, it appears that the plea raised by the plaintiff's side regarding unauthorized construction by the defendants regarding which the defendants' side contended that they have only repaired boundary walls for preventing any future damage. From the discussion, it is very much clear that the main contention of the plaintiff is only against the unauthorized construction by any manner. However, he did not much press against any repair work by the defendants within the limits of their tenanted premises.

Considering submissions of both sides, facts and circumstances of the case, the Court considers that the petition of the defendants dated 10.02.2021 may be allowed for ends of justice as it is found that the defendants have intended to make repair work which is nothing but replacement of the defective parts of the suit premises.

Accordingly, the petition dated 10.02.2021 filed by the defendants is allowed by which the defendants are permitted to make replacement of the defective parts of the suit premises as sought under the schedule of the petition with direction not to make any unauthorized construction which may change the nature and character of the suit premises. The cost of such repairment work should be borne by the defendants.

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In view of above discussion, both the petitions dated 10.09.2020 filed by the plaintiff and 10.02.2021 filed by the defendants are disposed of on contest.

Fix 24.11.2021 for hearing of the petitions dated 02.05.2015, 13.07.2017 and 09.08.2017 and payment of cost by the defendants.

Dictated and corrected by me,

JUDGE

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