

Ej. Suit No. 30 of 2020
CNR No. WBPS01-001217-2020

Order No: 25
29.01.2024

Today is fixed for hearing of the petition u/o-39, Rule-7 r/w section 151 of CPC filed by the plaintiff on 17.07.2023, written objection, if any, in the meantime.

Written objection against the application u/o-39, rule-7 of CPC has been filed by the defendants today before this Court.

Both sides are present by filing their respective haziras.

Now in presence of both sides the petition u/o-39, rule-7 r/w Section 151 of the CPC filed by the plaintiff dtd. 17.07.2023 as filed by the plaintiff is taken up for hearing.

Heard learned Advocate for the plaintiff who submitted that in order to ascertain the actual picture of the suit premises and also to ascertain the accommodation of the plaintiff in the suit holding, local inspection is required to be held in the suit building. Learned Advocate further submitted that the defendant will not be prejudiced in any manner if the petition is allowed. It has been specifically submitted by the Ld. Advocate for the plaintiff that this is a suit for eviction wherein the ground of reasonable requirement has been set forth by the plaintiff and to bring the actual pen picture of the suit property the plaintiff has filed the instant petition on the points specified in the petition itself.

The Ld. advocate for the defendant raised objection by saying that the points mentioned in the petition are not the matter of local inspection if the same is allowed same will prejudice the defendant as the plaintiff is trying to fish out evidence. It has been further submitted from the side of the defendant that the exact position of the defendant's accommodation is also required to be brought before this Court and necessary inspection should be held to ascertain the same. Accordingly, the Ld. Advocate for the defendant prays for passing necessary order.

Heard both sides.

Perused the materials on record.

Considered.

This is suit for eviction and after careful perusal of the pleadings of the respective sides in the light of the instant petition, this Court comes to the finding that one of the grounds for eviction of the defendant is reasonable requirement of the tenanted premises which has been categorically depicted in the plaint.

Therefore, in my considered view, in order to bring the actual picture of the suit property local inspection of the tenanted/suit premises on the points mentioned in the petition for local inspection is necessary. Moreover, by resorting to the above mode this Court would be in a better position to appreciate the matter in dispute by physical verification of the condition of the suit premises. Moreover, the defendant will also not be prejudiced in any manner if the instant application be allowed.

Now, so far regarding the submission made by the defendant for ascertaining the present position of the tenanted occupation of the defendant is concerned, it is found that point no.C of the said petition relates to the said point and the purpose of the defendant would also be served if the instant petition is allowed.

However, at the same time it is necessary to mention here in this context that it is settled position of law that the purpose of holding local inspection is only to assist the Court to arrive at

conclusion but not to procure evidence in support of the party asking for it. The Ld. Advocate Commissioner is to take note of the above position while conducting the inspection work.

In the circumstances the instant application for local inspection filed by the plaintiff under order 39 rule 7 of the Code of Civil Procedure read with section 151 of the Code of Civil Procedure is considered and allowed on contest.

Hence, it is,

ORDERED

That the instant application dated 17.07.2023 for local inspection filed by the plaintiff under order 39 rule 7 of the Code of Civil Procedure read with Section 151 of Code of Civil Procedure is considered and allowed on contest.

Let Learned Advocate Rituparna Ghosh of Presidency Small Cause Court be appointed as Learned advocate Commissioner for local inspection of the suit property as per points mentioned in the local inspection application.

Learned Advocate Commissioner is directed to cause service of notice upon both the parties before his commission work.

Learned advocate Commissioner is further directed to observe all legal formalities before starting his commission work.

Plaintiff is directed to pay Rs. 10,000/- (Ten thousand only) as commission fee to the learned advocate Commissioner by hand positively within 10 (ten) days from the date of this order and Ld. Advocate for the plaintiff is directed to submit the receipt showing such payment.

Writ be issued in favour of the Ld. Advocate Commissioner on submission of the payment receipt.

Fixing **16.03.2024** for filing of Commissioner's report.

Dictated and corrected by me:

Judge

Smt. Sudipa Banerjee
(J.O. Code: 01148)
Judge, 3rd Bench
Presidency Small Cause Court,
Calcutta