

Ejectment Suit No. - 116 of 024
CIS No. : WBPS01-000225-2024

Order No.- 14

13.05.2025

Today is fixed for hearing of the petition Under Order 39, Rule-7 r/w Section 151 of CPC.

Both sides present by filing hazira.

Defendant filed written objection in respect of the application Under order-39, Rule-7 read with Section 151 of the CPC.

Copy served upon the other side.

Now record is taken up for hearing in respect of the application under Order-39, Rule-7 read with Section 151 of CPC filed by the plaintiffs dtd. 20.11.2024.

Heard both sides.

Perused petition, written objection and other materials on record.

Considered.

The plaintiffs have filed the present petition for local inspection/commission on the points:-

- (i) The existing accommodation and measurement and mode of user available to the plaintiffs in their premises 17, Kashi Dutta Street, P.S. - Jorabagan, Kolkata – 700006.
- (ii) The existing accommodation and measurement mode of user available to the defendant premises no. 17, Kashi Dutta Street, P.S. - Jorabagan, Kolkata – 700006.
- (iii) Special feature, if any at premises no.17, Kashi Dutta Street, P.S. - Jorabagan, Kolkata – 700006.

Ld. Advocate on behalf of the defendant raised objection against the petition on ground that the plaintiff filed the present application for fishing out evidence. He also submitted that from the cause title of the plaint, it is seen that the plaintiffs have been residing at Vivekananda Park, Rastraguru Surendra Nath Banerjee Road, Kolkata 700111 but the plaintiffs have suppressed this material fact in the plaint and has not included the said premises for commission, hence submits that if commission be allowed, inspection of the said premises be directed as well. He further prays that the application under order 39 Rule 7 of the CPC be dismissed.

Generally when there is an eviction suit, the application under order 39 rule 7 of the CPC is allowed if the ground of eviction is reasonable requirement of the plaintiff of the suit premises. This is because it becomes necessary for ascertaining the availability of the suitable accommodation for just decision of the suit. I find that one of the grounds for eviction is reasonable requirements of the plaintiffs and the points mentioned in the schedule of the application are necessary for determination of the actual condition and accommodation of the plaintiffs and defendants in the suit building.

It is true that the plaintiffs have shown Vivekananda Park, Rastraguru Surendra Nath Banerjee Road, Kolkata 700111 as their residential address in the cause title of the plaint but plaintiffs submitted that the said premise is situated outside the Kolkata Municipal Corporation and beyond 10 kms and does not fall within the definition of alternative accommodation as envisaged under the Act. Whether the premises mentioned above falls or does not fall within the ambit of alternative accommodation as envisaged under the Act is something that will be under consideration at the final disposal of the suit and if the plaintiffs have been concealing material facts, they will face the consequences and these are different aspects. The defendant herein has not made any separate prayer seeking commission as per the procedure of law neither his written objection contain any specific points for commission.

In view of the above, the petition petition u/o-39, rule-7 r/w section 151 of C.P.C. dated 20.11.2024 is hereby allowed on contest in respect of all the points.

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Sandip Chatterjee Ld. Advocate of this Court is hereby appointed Advocate Commissioner to hold local inspection in terms of the petition.

Plaintiff is directed to hand over Rs. 10,000/- (ten thousand) towards fees of the Ld. Advocate Commissioner and file receipt.

Plaintiff is directed to supply a copy of the plaint, petition u/o-39, rule-7 r/w section 151 of C.P.C. dated 20.11.2024 to the Ld. Advocate Commissioner.

Ld. Advocate Commissioner is directed to go to the locale after serving due notice upon both sides, to hold local inspection in terms of all the points and submit report.

Let a copy of this order be served upon the Advocate Commissioner free of cost.

Issue writ accordingly.

To **04.08.2025** for filling Advocate Commissioner's report.

Dictated and corrected by me:

Judge

Smt. Glady Bomjan
(J.O. Code: 01039)
Judge, 3rd Bench
Presidency Small Cause Court,
Calcutta