

Ejectment Suit:-113 of 2021.

[CNR No WBPS 01 000234 2021]

Before – Sonia Majumdar- Ld. Chief Judge.

Order No:-17.

04-05-2023.

Today is fixed for hearing of petition u/o-39 Rule 7 read with Section 151 of C.P.C filed by the plaintiff dt:- 21-03-2023.

Parties file haziras. Defendant files W/O against the petition of the plaintiff dt21-03-2023 filed petition u/o-39 Rule 7 read with Section 151 of C.P.C after service of copy. On call parties are found present.

The petition u/o-39 Rule 7 read with Section 151 of C.P.C filed by the plaintiff dt:- 21-03-2023 is taken up for hearing together with its written objection filed by the defendant this day.

Heard both sides. Perused the petition, its Written Objection and materials on record. Considered.

By filing the application petition u/o-39 Rule 7 read with Section 151 of C.P Code dated 29-03-2023, plaintiff has prayed for appointment of an Advocate Commissioner to hold inspection and take note and measurement of the accommodation available to the plaintiff as well as defendant in terms of the schedule mentioned in the petition since the plaintiff has filed the instant suit on the ground of reasonable requirement along with other grounds.

At the time of hearing , Ld. Advocate for the plaintiff prayed for allowing his petition.

On the other hand, defendant by filing written objection dt 04-05-2023 has denied all the materials contentions made by the plaintiff in the petition.

At the time of hearing , Ld. Advocate appearing for the defendant submitted that the suit premises is only a small saloon, the

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measurement of the same is also not disputed, defendant is enjoying the suit premises since long and holding of Commission will be nothing but wastage of time.

Perusal of the plaint reveals that plaintiff has filed in the instant suit for eviction of the defendant from the suit premises on the ground of reasonable requirement of the suit premises along with other grounds . On the contrary, Defendant has denied the same in his written statement as well as in the Written Objection .

Therefore, in order to ascertain the actual accommodation available to the parties , and in order to properly adjudicate the real dispute between the parties, local inspection of the premises in question are found necessary.

Terms of inspection as mentioned in the instant application also appears to be legal.

Accordingly ,

it is,

Ordered

That the petition u/o- 39 Rule 7 read with Section 151 of C.P Code dt 21-03-2023 filed by the plaintiff is hereby allowed on contest but without cost .

Let Sri DIPAK KUMAR DAS , a practicing advocate of this Bar be appointed as Ld Commissioner to hold inspection in terms of the schedule of inspection as mentioned in the petition , subject to payment of cost Rs. 8,000/- by the plaintiff towards the fees of the Ld. Commissioner.

Ld commissioner is directed to visit the locale after due service of notice upon both sides as well as their Ld advocates well in advance and conduct the commission work in presence of both parties in accordance with law in terms of the schedule of the application and submit a report thereof before the Court, preferably within one month from the date of receipt of the writ.

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Parties are directed to supply copy of the instant application, plaint, w/o and other necessary documents which shall be required to facilitate the commission work to the Ld Commissioner.

Both parties are directed to extend full cooperation to the Ld. Commissioner in completion of the Local Inspection. Ld. Commissioner is also not allowed to collect any evidence under any circumstances or to act in any manner which is beyond the Writ of Commission or not within the ambit of his work.

To (**06-07-2023**) for filing receipt showing payment of cost by the plaintiff, thereafter writ shall be issued.

Chief Judge.

J.O .Code:- WB 01128