

Ejectment Suit:-118 of 2023.

[CNR No WBPS 01 000252 2023]

Before – Ashutosh Kumar Singh- Ld. Chief Judge.

Order No:-08.

10-01-2024.

Today is fixed for hearing of petition u/o- 39 Rule 7 read with Section 151 of C.P C filed by the plaintiffs dated 08-09-2023 and framing of issues.

Parties file hazira. Parties are found present on call. The petition u/o- 39 Rule 7 read with Section 151 of C.P C filed by the plaintiffs dated 08-09-2023 together with its affidavit in opposition filed by the defendant dt 17-10-2023 is taken up for hearing.

Heard both sides.

Perused the petition, its affidavit in opposition , plaint ,W/S as well as materials on record.

Considered.

By filing the application petition u/o-39 Rule 7 read with Section 151 of C.P Code dated 08-09-2023 , plaintiff has prayed for appointment of an Advocate Commissioner to hold inspection and take note and measurement of the accommodations available to the plaintiff as well as defendant in terms of the schedule mentioned in the petition since the plaintiffs have 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.

Against the petition , defendant has filed affidavit-in-opposition on 17/10/2023 denying all the materials contended in the petition.

At the time of hearing, Ld. Advocate for the defendant submitted that in the schedule of inspection, in point no-(1), the plaintiff has sought for

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inspection in respect of the rooms situated in the ground floor of the suit property but remain silent remaining other floors.

Against this, Ld. Advocate for the plaintiff submitted that in page-2 and in paragraphs 4, 6, 7 & 8, the plaintiff has categorically stated that the suit building is a two storied building and elaborated their reasonable requirement of the suit premises and available accommodation to them. Besides, the defendant is at liberty to point out to the Ld. Advocate Commissioner if any other accommodation available to the plaintiff at the time of local inspection.

Heard both sides.

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.

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. The terms of inspection as mentioned in the instant application also appears to be legal and valid.

Therefore, this Court therefore finds no reason, not to allow the prayer of the plaintiffs.

Accordingly ,

it is,

Ordered

That the petition u/o- 39 Rule 7 read with Section 151 of C.P Code dt 01-02-2023 filed by the plaintiff is hereby allowed on contest but without cost .

Let Smt. Kakali Basu Mallick (Enrolment No:- WB/914/1997) a practicing advocate of this Bar be appointed as Ld Commissioner to hold

(p-03)

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inspection in terms of the schedule mentioned in the instant application subject to payment of cost Rs. 9,500/- 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 in respect of the accommodations available to the parties in each floor of the suit building and submit a report thereof before the Court, preferably within one month from the date of receipt of the writ.

Parties are directed to supply copy of the instant application, plaint, 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 (**01-03-2024**) for filing receipt showing payment of cost by the plaintiff, thereafter writ shall be issued.

Dictated & corrected

by me :-

Chief Judge

Chief Judge.

J.O .Code:- WB 01244.