

Ej. Suit No. 148 of 2021
CIS No. WBPS01-000287-2021

Order No. 18

Date: 07.12.2023

Today is fixed for hearing of the petitions dated 14.07.2023 filed by the plaintiff u/s 151 of CPC, one seeking appointment of Advocate Commissioner and the other one seeking direction upon the defendant from not creating nuisance in the suit premises.

Both sides have filed respective Haziras.

The defendant has already filed written objections against the above applications.

Now in presence of both sides, the petition seeking appointment of Advocate Commissioner u/s 151 of CPC is taken up for hearing.

At the very outset, it is noted that since there is specific provision for appointment of Advocate Commissioner enumerated u/O-39, Rule-7 of CPC, this Court finds it prudent to treat the application u/s 151 of CPC as one under Order-39, Rule-7 r/w section 151 of CPC.

The plaintiff by filing the above application specifically submits that the defendant is presently using the suit premises as a garment factory and for the said purpose the defendant has installed several sewing machines therein and is creating nuisance and annoyance in the suit holding. In the above premises, the plaintiff by filing the instant application pressed for appointment of Advocate Commissioner to make surprise visit without informing any of the parties to see whether the defendant is actually running the above business or not.

The defendant raised vehement objection against the above petition and prays for rejection of the instant application.

Now if I carefully perused the record of the case, it is found that application for local inspection with regard to the accommodation of the plaintiff and the defendant has already been allowed by this Court and report is lying in the case record. The plaintiff now desires to hold a second inspection in the form of surprise visit by making out a case that the defendant is presently running a garment factory in the suit premises which is absolutely beyond the pleading of the plaintiff.

It is settled position of law that the purpose of holding local inspection over a premises is only to assist a Court to decide the matter in dispute and under no circumstances such petition can be allowed by appointing a Ld. Advocate Commissioner in order to fish-out evidence for the purpose of trial as it is never the purpose of local inspection to collect evidence for a party praying for it.

Needless to mention that true picture of the suit premises has already been submitted by the Ld. Advocate Commissioner and holding re-inspection therein without any new pleading coming to that effect would only result in collection of evidence and would be a glaring example of abuse of process of law, for sure.

In view of the above, I do not find any justification in allowing the prayer for local inspection as prayed by the plaintiff.

Hence,

It is,

ORDERED

That the application under Section 151 r/w Order 39 rule 7 CPC filed by the plaintiff on 14.07.2023 is decided in the negative on contest, but without cost.

Now the other petition dated 14.07.2023 u/s 151 of CPC filed by the plaintiff is taken up for hearing.

It is submitted by the plaintiff that the defendant is creating nuisance and annoyance to the defendant by using the suit premises as a garment factory by installing several sewing machines therein without the consent of the plaintiff and, as such, necessary direction be given to the defendant restraining the defendant to run the sewing machines in the suit room by any third party thereby disturbing the peace and tranquility of of the plaintiff in the suit building.

The defendant has categorically denied such allegation and has prayed for rejection of the application.

I heard both sides.

Perused the materials on record.

Considered.

On perusal of the pleadings of the plaintiff, it is found that the facts asserted in the petition u/s 151 of CPC are absolutely beyond the pleading of the plaintiff and naturally no interim order can be passed in favour of the plaintiff only on the basis of the allegation made in the captioned application, moreso, when there is specific provision available under the West Bengal Premises Tenancy Act, 1997 to get redress in accordance with law.

Therefore, in my considered view the petition filed by the plaintiff is misconceived one and hence rejected.

Hence, it is,

O R D E R E D,

That the petition u/s 151 of CPC filed by the plaintiff is hereby considered and rejected on contest but without cost.

Fixing 12.02.2023 for fixing of issues.

Dictated and corrected by me:

Judge

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