

Ej. Suit No. 51 of 2017
CNR No. WBPS01-000099-2017

Order No: 29
28.03.2023

Today is fixed for filing amended plaint by the plaintiff and hearing of petition u/o-39, rule-7 r/w section 151 of CPC filed by the plaintiffs on 05.08.2022.

No written objection has been filed today by the defendants.

Both sides are present by filing their respective haziras.

Heard learned Advocate for the plaintiff who submitted that in order to ascertain the accommodation of the plaintiff and also to bring the actual picture of the suit premises local inspection is required to be held in the suit premises. Learned Advocate further submitted that the defendants will not be prejudiced in any manner if the petition is allowed. It has been specifically submitted by the Ld. Advocate for the plaintiffs that this is a suit for eviction wherein the ground of reasonable requirement has been set forth by the plaintiffs and to bring the actual pen picture of the suit property the plaintiffs have filed the instant petition on the point 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 defendants as the plaintiffs are trying to fish out evidence. Accordingly, the Ld. Advocate for the defendants 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 defendants are reasonable requirement of the tenanted premises and the factum of such requirement 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 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 accommodation under the possession of the plaintiffs and also in occupation of the defendants in the form of other local feature or features. Moreover, the defendants will also not be prejudiced in any manner if the instant application be 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 plaintiffs 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 05.08.2022 for local inspection filed by the plaintiffs 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.

Let Learned Advocate **Smt. Soma Mukhopadhyay** 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.

Plaintiffs are 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 Commissioner 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 **16.06.2023** 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**