

EJECTMENT SUIT NO. 391 OF 2013 [5718/2014]
C. N. R. NO. WBPS01-000451- 2013
Before Sri Sridhar Chandra Su, Ld. Judge, 5th Bench.

ORDER NO. 62 DATED 29.11.2022

Today is fixed for hearing of the application under Or.39 R.7 of C.P.C. filed on 27.09.2022.

Both parties have filed their respective haziras.

Plaintiffs have filed written objection. Copy served. Let it be kept with the record.

Ld. Advocates for both sides are present.

The record is taken up for hearing the petition.

Heard ld. Advocates for both sides.

Perused the petition, written objection and materials on record.

It is submitted by ld. Advocate for the defendant, through the instant petition, that the plaintiffs made construction on the 1st floor of the suit premises and such construction was extended up to 2nd floor and 3rd floor. The Allahabad Bank vacated the 1st floor in the year 2016 during the pendency of this suit. And the said 1st floor was let out to the new tenant namely Goel Estull Clothing Pvt. Ltd. For carrying business of spices. During the pendency of the eviction suit, they have got one shop room in the ground floor and the said shop room was relet to one Laxmi Kant Shah. All these facts have never come when commission was held. Accordingly, defendant prayed for holding commission of the suit premises.

On the other hand, ld. Advocate for the plaintiffs, through written objection, submitted that when the defendant had knowledge about the said fact, he has scope to cross examine on those points. Evidence has already been started. Plaintiff has filed examination in chief of P.W.1. and some documents have also been marked as Exhibits. Ld. Advocate further submitted that the defendant is trying to fish out evidence to cover their lacunae. Only for dragging the suit, defendant has come up with this application.

Considering the above submissions of ld. Advocates for both sides along with materials on record, it appears that there is no scope at this stage to entertain the present application filed by the defendant under Or.39 R.7 of C.P.C.

Hence, it is ORDERED that the application under Or.39 R.7 of C.P.C. filed by the defendant on 27.09.2022 is hereby rejected on contest.

Fix 21.12.2022 for further evidence of P.W.1.

DICTATED AND CORRECTED BY ME,

JUDGE

JUDGE
[5TH BENCH]
J.O. Code No. WB-00-620.