

EJECTMENT SUIT NO. 118 of 2023
C.N.R No. WBPS01-000252-2023

IN THE 4TH BENCH, PRESIDENCY SMALL CAUSE COURT
PRESENT: SMT. ARCHITA SEN, JUDGE BENCH-4, PRESIDENCY
SMALL CAUSE COURT.

ORDER NO- 20
DATED 09.03.2025:

Today is fixed for hearing of the petition dated 08/01/2025 under Order XXVI Rule 9 of C.P.C., filed by the plaintiff. Plaintiff as well as defendants file separate attendance through their respective Ld. Advocates. The defendants filed the written objection against the petition dated 08/01/2025.

The record is taken up for hearing in respect of the said petition.

Heard both sides. Perused the petition and the written objection.

Considered.

The plaintiff by filing the instant petition has prayed for an Order appointing an Engineer Commissioner to inspect the suit premises on the points as mentioned in the petition dated 08/01/2025. It is stated on behalf of the plaintiff that during the local inspection by the Ld. Advocate Commissioner it came to the notice of the plaintiff that the defendants have made a mezzanine floor at the suit premises by cutting walls. After this fact came to the knowledge of the plaintiff a petition for amendment of the plaint was filed by the plaintiff which was allowed by this Court. By that amendment the ground of unauthorized construction has been added in the plaint. Now it is necessary to investigate the suit premises by a competent person for ascertainment of any damage to the suit premises which is caused due to the construction of mezzanine floor. It is further stated on behalf of the plaintiff that though the suit premises has been locally inspected by the Advocate Commissioner but an Advocate Commissioner is not an expert to ascertain the damage, if any, caused to the suit premises. So the instant petition may be allowed as the report of the engineer commissioner will come in aid in the proper adjudication of the dispute.

The defendants have filed written objection and abnegated all the contentions of the plaintiff. It was argued on behalf of the defendants that the plaintiff filed the application for local investigation only to delay the suit. The appointment of an Engineer Commissioner is not needed because it was existent before filing of the suit. If the prayer of the plaintiff is allowed then it would change the nature and character of cause of action and it will amount to fishing out of evidence. For these reasons the defendants prayed for rejection of the instant petition.

The object of local investigation under Order XXVI Rule 9 of the CPC is to obtain evidence which from its peculiar nature can best be had from the spot itself. Such evidence enables the Court to properly and correctly understand and assess the evidence on record. It clarifies or explains any point which is left doubtful on the evidence on record. The commissioner appointed under Order XXVI Rule 9 of the CPC is not supposed to collect evidence. The commissioner under this provision can be appointed at any stage of the suit where it deems a local investigation to be requisite for the purpose of elucidating any matter in dispute. In the present suit an advocate commissioner was appointed for holding local inspection at the suit premises. The record reveals that though the Ld. Advocate Commissioner received the writ but she has not filed the inspection report yet. But it is stated by the plaintiff that during local inspection it was revealed that the defendants have constructed a mezzanine floor inside the suit premises. Basing on that the plaintiff also incorporated the ground of unauthorized construction in the plaint. So now it is necessary that the real scenario of the suit premises should come before the Court. The point regarding whether any mezzanine floor exists inside the suit premises or not, can be answered by the Advocate Commissioner also but the Advocate Commissioner does not have the expertise to ascertain whether any damage is being caused to the suit premises because of that mezzanine floor. The question as to whether any mezzanine floor exists inside the suit premises or not, is not very much important because after going through the written objection filed by the defendants it can be seen that they admitted that the mezzanine floor was in existence before filing of the suit. But it is necessary for the Court to have sufficient materials in its arm to deal with the ground of unauthorized construction and damage to the suit premises. For getting a clear picture of the exact state of affairs, the appointment of commissioner is necessary. The points for investigation as mentioned in the instant petition, are not within the capacity of an Advocate Commissioner. Special knowledge is required for investigating the suit premises on these points. So this Court is of the view that an Engineer Commissioner may be appointed for holding local investigation. The points as mentioned in the petition do not appear to be such which may amount to fishing out of evidence.

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In such premises this Court intends to pass the following order--

O R D E R E D

That let **Mr. Rajeeb Sarkar** a member of the Local Bar Association, be appointed as the Engineer Commissioner for the purpose of the case.

His fees is fixed at **Rs. 12,000/-** to be paid by the plaintiff. The plaintiff is directed to pay the fees of the Ld. Engineer commissioner to him by hand within 15 days hereof.

The plaintiff is directed to file the required copies of documents needed for the investigation within the aforesaid period.

Let a copy of this Order be sent to Mr. Rajeeb Sarkar.

The parties are further directed to co-operate with the learned commissioner and are directed not to take any sort of adjournments.

Writ will be issued after the payment of fees and filing of documents.

The learned commissioner on receipt of the writ is requested to do the needful investigation on all points mentioned in the instant Order.

The learned commissioner on receipt of writ is requested to ensure that the report is filed without any untoward delay, preferably within the next date.

The petition under Order XXVI Rule-9 of the C.P.C dated 08.01.2025 is thus disposed of **on contest** without costs.

Let a copy of this Order be also sent to the President of the Local Bar Association of Presidency Small Causes Court, Calcutta with a request to ensure submission of commissioner's report by **Kakali Basu Mallick**, another member of the Association within the next date positively.

Fix 27-06-2025 for report from the investigation Commissioner and the Advocate Commissioner.

Typed, Corrected and Printed by me.

Judge, Bench-4
Presidency Small Cause Court.
J.O Code WB01174

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