

Ej. Suit No. 337 of 2011
CNR No. :: WBPS01-000504-2011

Order No. 76
Date : 07.02.2024

Today is fixed for hearing of the petition u/o-6, Rule-17 of CPC and hearing of the petition u/s 151 of CPC, both filed at the instance of the defendant on 17.01.2024.

Both sides have filed their respective haziras.

Plaintiff has filed written objection against the petition u/s 151 of CPC and has filed a petition seeking time to file written objection against the petition u/O-6, Rule-17 of CPC.

The petition seeking time to file written objection is considered and allowed.

Now in presence of both sides the petition u/s 151 of CPC filed by the defendant is taken up for hearing.

Hd. Both sides.

Perused the petition and other materials on record.

Considered.

This is suit for ejectment. Plaintiffs have claimed to be the owners/landlords in respect of the suit property. On the other hand, the status of the defendants have been coloured as a monthly premises tenant thereof. Plaintiffs have filed this suit for eviction of the defendant on various grounds as mentioned in the plaint.

The defendant/tenant has filed one application dated 17.01.2024 stating interaila that the suit property/tenanted property is lying completely in ruinous condition and needs to be repaired, immediately. He has alleged that the plaintiffs, inspite of repeated requests made by him, have neither taken any step for making necessary repairing nor they have allowed the defendant to do the same. Hence, this prayer.

The defendant has categorically mentioned that he desires that necessary repairing work may be done by the plaintiff by way of repairing or replacing the damaged and broken door of the main entrance of the suit room, by repairing the damaged window of the kitchen, by plastering the walls of the rooms along with white wash and also to repair the ceiling of the tenanted room in order to make it inhabitable condition and to prevent the occurrence or happening of any undesirable incident.

The plaintiffs though have not categorically denied the necessity of repairing of the suit property that has been projected by the defendant, but, the plaintiffs have stated that such damage has been intentionally caused by the defendant by the long continuous non-use of the tenanted premises by the defendant. It was also submitted by the Ld. Advocate for the plaintiff that even if urgent repairing work is not needed for the tenanted property but he has no objection if such repairing work is being carried out by the defendant at his own cost without changing the nature and character of the tenanted premises and without causing hindrance or obstruction to the portion occupied by the plaintiff in the suit premises. It was also submitted by the defendant that though the plaintiff does not have any objection if repairing work is done by the defendant at his own cost but the repairing of the ceiling of the room is to be done by the plaintiff at his own expense.

In the case in hand, the plaintiff, in order to make his claim candid the regarding the ground of reasonable requirement filed one application for local inspection and that was allowed by this Court appointing an Advocate commissioner to hold the local

inspection. Report has been submitted, accordingly by the Ld. Advocate Commissioner today before this Court and the same lying with the case record.

Therefore, the present condition of the suit property is already on record and, as such, any subsequent changes, if any, would be ascertainable easily.

A cursory reading of the report goes to suggest that the suit rooms are in dilapidated condition which requires repairing and maintenance. It appears from the report that the inspection work was held in presence of both the Ld. Advocates for the respective parties. No objection is also forthcoming from the side of the plaintiffs against the said report.

Before pondering over the merit of the application under challenge one thing should be kept in our mind that it is the plaintiffs/landlords, whose duty is to keep the tenanted portion in habitable condition.

It is true that though the plaintiff has not grounded a plea of causing damage in the tenanted premises, he is apprehensive that if the repairing work is being allowed, the same might caused damage to the tenanted property.

In this regard, one should not oblivious that the report of the Advocate commissioner clearly sketched the present condition of the suit property with its nature and condition. Therefore, the nature and condition of the suit property, as it stands today, is well within our hand. Here, since, the report showing the present nature and condition of the suit property is with us, it can not be said that, the plaintiffs will be prejudiced in establishing their plea they have alleged. The same reason would be the answer to the anticipation cast in the mind of the Ld. Advocate for the plaintiff to the effect that, the defendant in the event of repairing of the suit property may change the nature and character of the same.

Now, I reiterate my earlier statement that, since no decree of eviction has been granted against the defendant/tenant, as yet, he holds the status that of a 'tenant' in respect of the suit property having every right to stay in the suit property peacefully and without fear of any injury not only to his right of tenancy but also to his life and the life of the persons dwelling with him. Here, one thing can also be said that, since the suit premises is the subject-matter of the dispute, the same should be kept intact, at least till final adjudication of the dispute between the parties. Here, it is also pertinent to mention that, in a suit of present nature the defendant can not and should not be allowed to do anything so that at the end of the trial he can say that, eviction of the defendant/tenant has virtually been done as there is no existence of any tenanted premises.

Therefore, having regard to the entire facts and circumstances of the case in hand, this Court does not find any justification in refusing the prayer for repairing as made by the defendant/tenant but only to the extent of the tenanted portion and not beyond the same at his own cost as the plaintiff has specifically submitted that he has no objection if the repairing work is carried out by the defendant at his own cost as per point nos. 1 to 3 of the petition and the plaintiff shall bear the expense of the repairing work of the ceiling of the suit room as specified in point no. 4 of the said petition.

Hence, it is
ORDERED

that the application under Section under section 151 of CPC filed by the defendant on 17.01.2024 is allowed on contest so far it relates to the suit property but without any cost but such repairing work is required to be done by the defendant at his own cost.

Permission is hereby accorded to the defendant/tenant to make necessary repairing of the suit premises without changing the nature and character of the same and on condition that he shall not claim any equity, whatsoever, in future, in this regard. Necessary permission/sanction from the authority concerned, if any, shall be obtained by the defendant/tenant, in the event of undertaking such repairing work.

Fixing **19.02.2024** for hearing of the petition u/O-6, Rule-17 of CPC filed by the defendant on 17.01.2024, written objection, if any, in the meantime.

Dictated and corrected by me:

Judge

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